

BIENNIAL REPORT
of the
ATTORNEY GENERAL
STATE OF FLORIDA

From January 1, 1949, to December 31, 1950

RICHARD W. ERVIN
Attorney General



Tallahassee, Florida
1950

ROSE PRINTING COMPANY, TALLAHASSEE, FLORIDA



FLORIDA STATE LIBRARY

**This, my first Biennial Report, is affectionately
dedicated to the memory of my father,**

RICHARD W. ERVIN, SR.

1876-1950

**whose wise counsel and measured judgment was and
always will be a source of continuous inspiration
and encouragement.**



STATE OF FLORIDA
OFFICE OF THE
ATTORNEY GENERAL
TALLAHASSEE

RICHARD W. ERVIN
ATTORNEY GENERAL

January 1, 1951

LETTER OF TRANSMITTAL

TO HIS EXCELLENCY
HONORABLE FULLER WARREN
GOVERNOR OF FLORIDA

SIR:

I have the honor of submitting to you my Biennial Report of the two preceding years from January 1, 1949 through December 31, 1950. This report is submitted as required by the constitutional mandate directing each officer of the Executive Department to make a full report of the official acts, of the receipts and expenditures of his office, and of the requirements of same, to the Governor at the beginning of each regular session of the legislature or whenever the Governor shall require a report.

In keeping with the long established custom, this report, with a brief of all opinions rendered during two calendar years, includes a listing of former Attorneys General, the personnel of my office during the past two years, the membership of the Florida Supreme Court, Circuit Judges, Judges of the Courts of Record, the Courts of Crime, the Criminal Courts of Record, the Civil Courts of Record, Juvenile Courts and the County Judges. Listed also are the State Attorneys, the Assistant State Attorneys and County Solicitors.

Pertinent information, reports and statistics connected with the activities of my office and opinions rendered during the last biennium as printed herein will be found listed in the Table of Contents.

Respectfully submitted,
RICHARD W. ERVIN
Attorney General

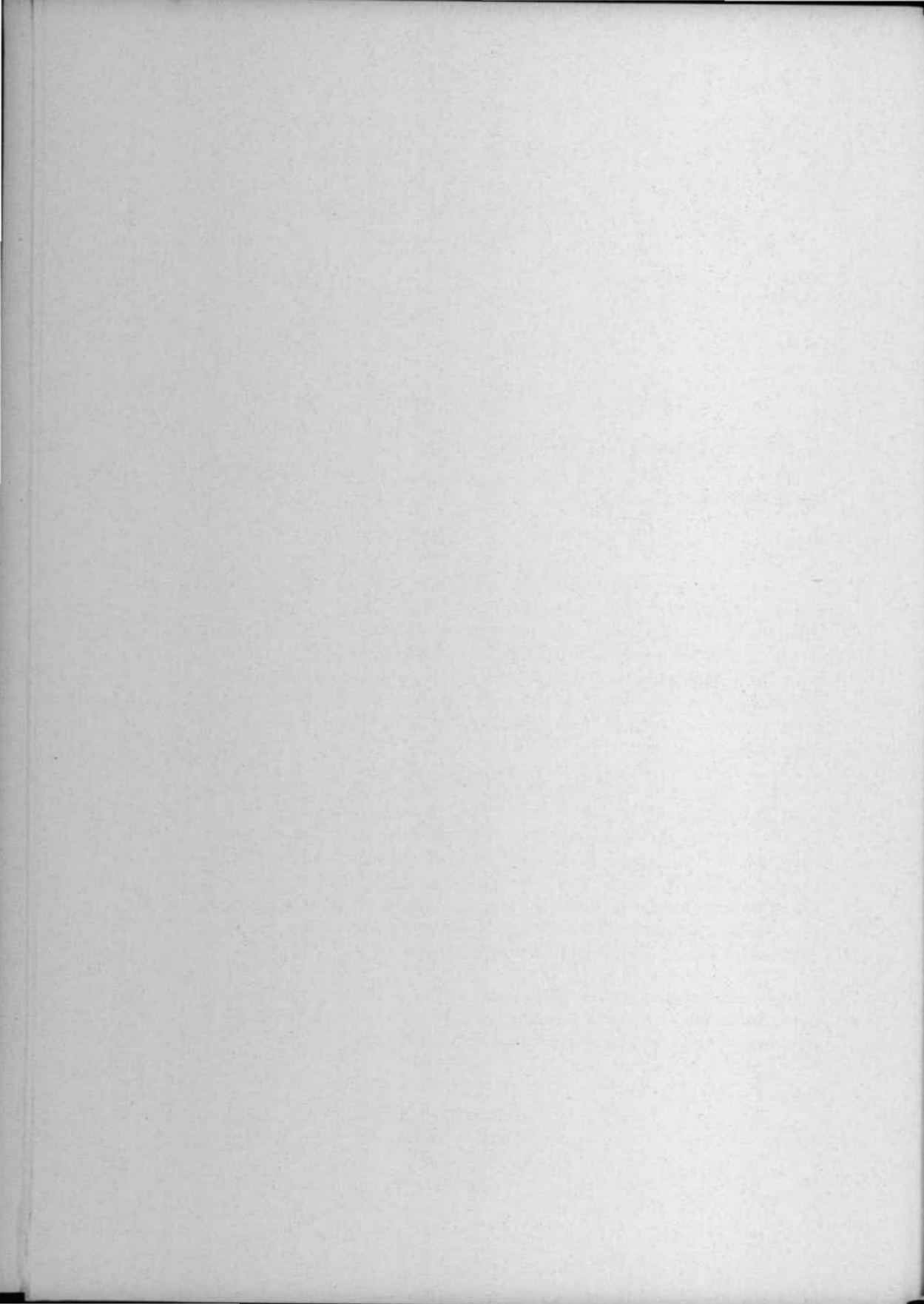


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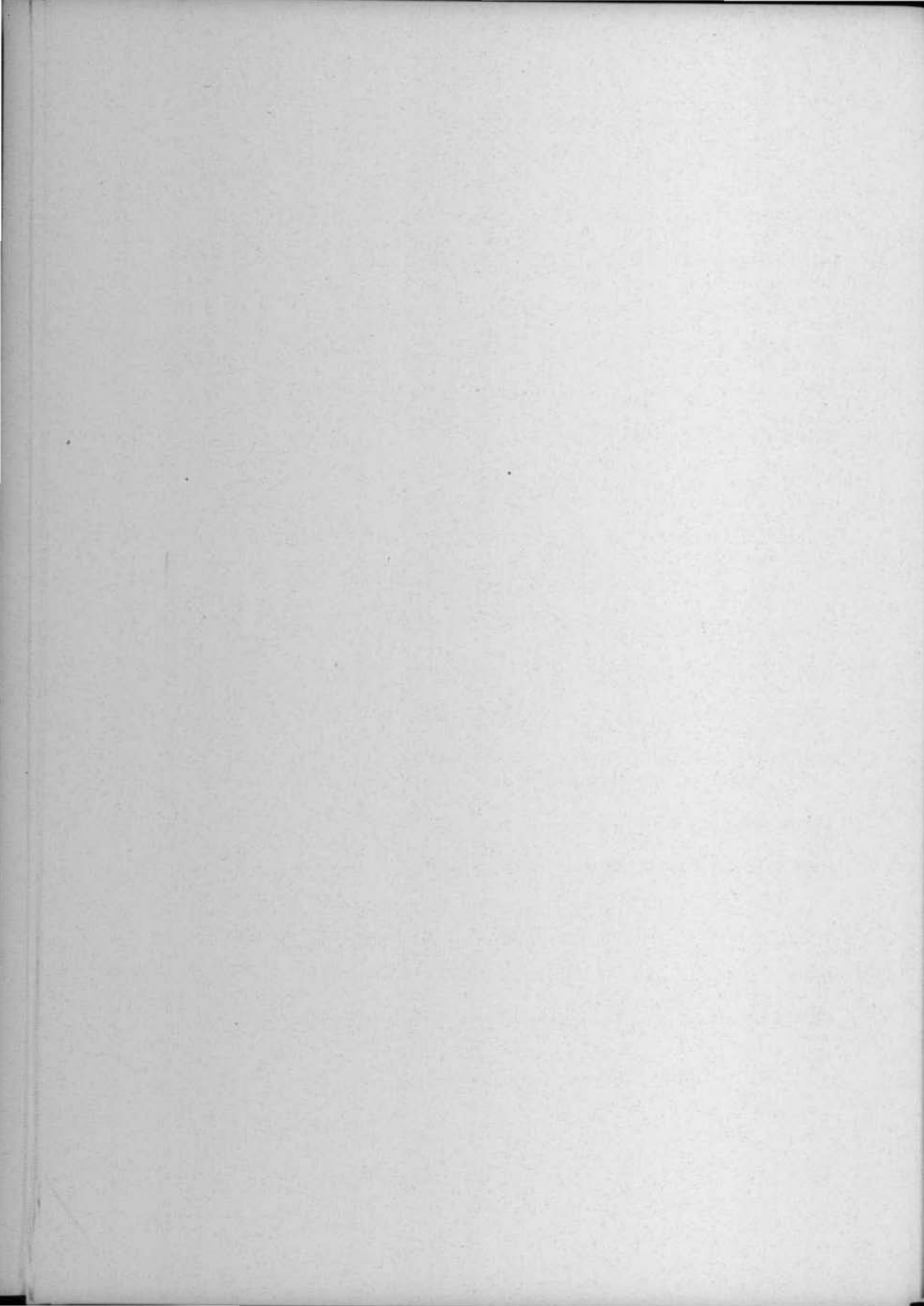
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ATTORNEYS GENERAL OF FLORIDA

SINCE 1845

JOSEPH BRANCH	1845-1846
AUGUSTUS E. MAXWELL	1846-1848
JAMES T. ARCHER	1848-1848
DAVID P. HOGUE	1848-1853
MARIANO D. PAPY	1853-1860
JOHN B. GALBRAITH	1860-1868
JAMES D. WESCOTT, JR.	1868-1868
A. R. MEEK	1868-1870
SHERMAN CONANT	1870-1870
J. P. C. DREW	1870-1872
H. BISSBEE, JR.	1872-1872
J. P. C. EMMONS	1872-1873
WILLIAM A. COCKE	1873-1877
GEORGE P. RANEY	1877-1885
C. M. COOPER	1885-1889
WILLIAM B. LAMAR	1889-1903
JAMES B. WHITFIELD	1903-1904
W. H. ELLIS	1904-1909
PARK TRAMMELL	1909-1913
THOMAS F. WEST	1913-1917
VAN C. SWEARINGEN	1917-1921
RIVERS BUFORD	1921-1925
J. B. JOHNSON	1925-1927
FRED H. DAVIS	1927-1931
CARY D. LANDIS	1931-1938
GEORGE COUPER GIBBS	1938-1941
J. TOM WATSON	1941-1949
RICHARD W. ERVIN	1949-

ATTORNEY GENERAL'S OFFICE

LEGAL DEPARTMENT

RICHARD W. ERVIN	Attorney General
J. ROBERT McCLURE	First Assistant
HOWARD S. BAILEY	Assistant
REEVES BOWEN	Assistant
FRED M. BURNS	Assistant
FRANK S. CANNOVA	Assistant
PHILLIP GOLDMAN	Assistant
FRANK J. HEINTZ	Assistant
MALLORY H. HORTON	Assistant
T. PAINE KELLY	Assistant
JOHN A. MADIGAN, JR.	Assistant
RALPH M. McLANE	Assistant
RALPH E. ODOM	Assistant
GEORGE E. OWEN	Assistant
GEORGE M. POWELL	Assistant
MURRAY SAMS, JR.	Assistant
MARY SCHULMAN	Assistant
JAMES B. TONEY	Assistant
CLYDE G. TRAMMELL, JR.	Assistant
R. M. YENT	Assistant
*PAUL P. MILLER	Special Assistant
*FRANCIS C. MILLICAN	Special Assistant
*ROSS H. STANTON, JR.	Special Assistant
*MONTE J. TILLIS, JR.	Special Assistant
LILLIAN S. RYDER	Secretary to Attorney General
SHIRLEY SWAIN	Secretary to First Assistant
BESSIE MARY ALLEN	Secretary
LEILA K. COFIELD	Secretary
ALICE M. CONTER	Secretary
CAROLINE L. DEDGE	Secretary
PAULINE H. EVANS	Secretary
BETTY FLETCHER	Secretary
NINA LEE KINSEY	Secretary
WINIFRED KITCHING	Secretary
PEGGY SUE RUSS	Secretary
AGNES H. SIBLEY	Secretary
MARTHA G. SMITH	Secretary
CATHARINE F. TURNBULL	Secretary
LILLIAN H. WALKER	Secretary
GEORGIA K. BARBER	Opinion Editor
MARGARET E. BLEDSOE	File Clerk
WILLIAM H. GASQUE	Special Investigator
MARGUERITE E. KEEGAN	Assistant File Clerk
MARJORIE I. LLOYD	Clerk
LIDIE E. MOSS	Receptionist
HORTENSE K. WELLS	Librarian
*LOIS M. DANIELS	Secretary
*EUNICE SINGLETARY	Secretary
*IDA M. WHITTINGTON	Secretary

*Resigned.

ATTORNEY GENERAL'S OFFICE

STATUTORY REVISION

CHARLES T. HENDERSON	Assistant Attorney General, Director of Statutory Re- vision and Bill Drafting
VIRGINIA SEARCY BARR	Special Assistant
ROSE D. KITCHEN	Special Assistant
CLARENCE A. NEELEY	Special Assistant
*WILLIAM ARTHUR DICUS	Special Assistant
*ERLYNNE MARIE DOUGLAS	Special Assistant
**JAMES F. ECKART	Special Assistant
*MAYO CHASE JOHNSTON	Special Assistant
*ERNEST W. MACHEN, JR.	Special Assistant
*ROY T. RHODES	Special Assistant
*ROGER F. WHITMORE	Special Assistant
*VOLIE A. WILLIAMS, JR.	Special Assistant
JEWELL L. ROEMER	Secretary to Director
MARY O'Q. POMEROY	Secretary
*ELIZABETH H. CRAWFORD	Typist (Temporary)
BETTY J. KERBY	Typist (Temporary)
STELLA GLOVER POTT	Typist
EDITH GRADY COOMBS	Verifier
MARGARET F. SAMPEY	Verifier
JANE WILLIAMS	Clerk (D.C.T., Part-time)
***JEAN ODER	Clerk (D.C.T., Part-time)
***MONA BLAYLOCK	Clerk (D.C.T., Part-time)
GARLON DAVIS	Clerk (F.S.U., Part-time)
***DAL ALBRITTON	Clerk (F.S.U., Part-time)
***RICHARD BROOKS	Clerk (F.S.U., Part-time)
***EARL DOBERT	Clerk (F.S.U., Part-time)
***NANCY REARDON	Clerk (F.S.U., Part-time)
***ROD K. SHAW, JR.	Clerk (Univ. of Fla., Part-time)
***WILLIAM F. LEONARD	Clerk (Univ. of Fla., Part-time)

*Resigned to enter private practice.

**Military leave.

***Employment Terminated.

JUDICIAL DEPARTMENT OF FLORIDA

SUPREME COURT JUSTICES

TALLAHASSEE, FLORIDA

<i>Chief Justice</i>		<i>Term Expires</i>
ALTO ADAMS	Tallahassee	January, 1955

H. L. Sebring replaces Alto Adams as Chief Justice on January 9, 1951, to serve for a period of two years.

Justices

ELWYN THOMAS	Tallahassee	January, 1957
B. K. ROBERTS	Tallahassee	January, 1955
T. FRANK HOBSON	Tallahassee	January, 1957
ROY H. CHAPMAN	Tallahassee	January, 1953
*H. L. SEBRING	Tallahassee	January, 1955
GLENN TERRELL	Tallahassee	January, 1955

GUYTE P. McCORD, Clerk Supreme Court.

RICHARD W. ERVIN, Attorney General, Reporter to Supreme Court.

DEMPSEY B. MAYO, Marshall.

CARSON F. SINCLAIR, Librarian.

CIRCUIT JUDGES

FIRST Judicial Circuit—Escambia, Okaloosa, Santa Rosa and Walton Counties.

L. L. Fabisinski	Pensacola, Florida
D. Stuart Gillis	DeFuniak Springs, Fla.

SECOND Judicial Circuit—Franklin, Gadsden, Jefferson, Leon, Liberty and Wakulla Counties.

Hugh M. Taylor	Quincy, Florida
W. May Walker	Tallahassee, Florida

THIRD Judicial Circuit—Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee and Taylor Counties.

R. H. Rowe	Madison, Florida
Hal W. Adams	Mayo, Florida

FOURTH Judicial Circuit—Duval, Clay and Nassau Counties.

Charles A. Luckie	Jacksonville, Florida
Bayard B. Shields	Jacksonville, Florida
A. D. McNeil	Jacksonville, Florida
Claude Ogilvie	Jacksonville, Florida

DUVAL COUNTY CIRCUIT—Duval County.

Wm. D. Barfield, Jacksonville, Florida, until January 1, 1951,
Edwin L. Jones after January 1, 1951.

FIFTH Judicial Circuit—Citrus, Hernando, Lake, Marion and Sumter Counties.

Truman G. Futch	Tavares, Florida
F. R. Hocker	Ocala, Florida

SIXTH Judicial Circuit—Pasco and Pinellas Counties.

John U. Bird	Clearwater, Florida
John Dickinson	St. Petersburg, Fla.
Victor O. Wehle	St. Petersburg, Fla.

SEVENTH Judicial Circuit—Flagler, Putnam, St. Johns and Volusia Counties.

Geo. Wm. Jackson	St. Augustine, Fla.
Herbert B. Frederick	Daytona Beach, Fla.

EIGHTH Judicial Circuit—Alachua, Baker, Bradford, Gilchrist, Levy and Union Counties.

John A. H. Murphee Gainesville, Florida
A. Z. Adkins Starke, Florida

NINTH Judicial Circuit—Brevard, Indian River, Martin, Okeechobee, Orange, Osceola, St. Lucie and Seminole Counties.

M. B. Smith Titusville, Florida
A. O. Kanner Stuart, Florida
Frank A. Smith Orlando, Florida

TENTH Judicial Circuit—Hardee, Highlands and Polk Counties.

Don Register Winter Haven, Florida
D. O. Rogers Bartow, Florida

ELEVENTH Judicial Circuit—Dade and Monroe Counties.

Charles A. Carroll Miami, Florida
George E. Holt Miami, Florida
Stanley Milledge Miami, Florida
N. Vernon Hawthorne Miami, Florida
William A. Herin Miami, Florida
Marshall C. Wiseheart Miami, Florida
Grady L. Crawford Miami, Florida
Vincent C. Giblin Miami, Florida
Joe N. Morris Miami, Florida

TWELFTH Judicial Circuit—DeSoto, Charlotte, Collier, Glades, Hendry, Lee, Manatee and Sarasota Counties.

Lynn Gerald Fort Myers, Florida
W. T. Harrison Palmetto, Florida

THIRTEENTH Judicial Circuit—Hillsborough County.

L. L. Parks Tampa, Florida
Harry N. Sandler Tampa, Florida
H. C. Tillman Tampa, Florida
I. C. Spoto Tampa, Florida

FOURTEENTH Judicial Circuit—Bay, Calhoun, Gulf, Holmes, Jackson and Washington Counties.

E. Clay Lewis, Jr. Panama City, Fla.
E. C. Welch Marianna, Florida

FIFTEENTH Judicial Circuit—Broward and Palm Beach Counties.

C. E. Chillingworth West Palm Beach, Fla.
Geo. W. Tedder Ft. Lauderdale, Fla.
Joseph S. White West Palm Beach, Fla.

SIXTEENTH Judicial Circuit—Monroe County.

Aquillino Lopez, Jr. Key West, Florida

JUDGES AND SOLICITORS

BROWARD COUNTY CRIMINAL COURT OF RECORD

W. T. Kennedy Judge
Otis Farrington Solicitor

DADE COUNTY CRIMINAL COURT OF RECORD

Ben C. Willard Judge
Robert R. Taylor Solicitor

DUVAL COUNTY CRIMINAL COURT OF RECORD

Edwin L. Jones Judge
Guy Crews Solicitor

L. A. Grayson Judge
V. R. Fisher Solicitor

Thomas S. Caro Judge
Allan B. Cleare, Jr. Solicitor

Edward G. Newell	Judge
T. Harold Williams	Solicitor

Roy H. Amidon Judge
Gunter Stephenson Solicitor

W. M. Murphy	Judge
O. Raymond Ellars	Solicitor

Ernest E. Mason Judge
Forsyth Caro Solicitor

W. Kenneth Barnes Judge
T. H. Getzen Solicitor

Dade County.....Hon. Wayne Allen, Miami

Dade County.....	Hon. D. J. Heffernan, Miami
	Hon. Norman Hendry, Miami
Duval County.....	Hon. Burton Barrs, Jacksonville

Broward County.....	Hon. Dorr S. Davis, Ft. Lauderdale
Dade County.....	Hon. Walter H. Beckham, Miami
Duval County.....	Hon. W. S. Criswell, Jacksonville
Hillsborough County.....	Hon. Paul R. Kickliter, Tampa
Monroe County.....	Hon. Eva W. Gibson, Key West
Orange County.....	Mrs. Mattie H. Farmer, Orlando
Pinellas County.....	Not Replaced
Pinellas County.....	Hon. Alfred P. Marshall, Clearwater
Polk County.....	Hon. G. Bowdon Hunt, Bartow

FIRST Judicial Circuit.....J. Edwin Holsberry, Pensacola
Escambia, Okaloosa, Santa Rosa and Walton Counties.

SECOND Judicial Circuit.....William D. Hopkins, Tallahassee
Franklin, Gadsden, Jefferson, Leon, Liberty and Wakulla Counties.

THIRD Judicial Circuit.....	A. K. Black, Lake City Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee and Taylor Counties.
FOURTH Judicial Circuit.....	William A. Hallowes, III, Jacksonville Clay, Duval and Nassau Counties.
FIFTH Judicial Circuit.....	J. W. Hunter, Tavares Citrus, Hernando, Lake, Marion and Sumter Counties.
SIXTH Judicial Circuit.....	Archie Clement, Tarpon Springs Pasco and Pinellas County
SEVENTH Judicial Circuit.....	Murray Sams, Deland Flagler, Putnam, St. Johns and Volusia Counties.
EIGHTH Judicial Circuit.....	T. E. Duncan, Gainesville Alachua, Baker, Bradford, Gilchrist, Levy and Union Counties.
NINTH Judicial Circuit.....	Murray W. Overstreet, Kissimmee Brevard, Indian River, Martin, Okeechobee, Orange, Osceola, St. Lucie and Seminole Counties.
TENTH Judicial Circuit.....	Walter W. Woolfolk, Lake Wales Hardee, Highlands and Polk Counties.
ELEVENTH Judicial Circuit.....	Glenn C. Mincer, Miami Dade County.
TWELFTH Judicial Circuit.....	Wm. M. (Mack) Smiley, Bradenton Charlotte, Collier, DeSoto, Glades, Hendry, Lee, Manatee and Sara- sota Counties.
THIRTEENTH Judicial Circuit.....	J. Rex Farrior, Tampa Hillsborough County.
FOURTEENTH Judicial Circuit.....	Mercer P. Spear, Panama City Bay, Calhoun, Gulf, Holmes, Jackson and Washington Counties.
FIFTEENTH Judicial Circuit.....	Phil O'Connell, West Palm Beach Broward and Palm Beach Counties.
SIXTEENTH Judicial Circuit.....	J. Lancelot Lester, Key West Monroe County.

ASSISTANT STATE ATTORNEYS

FIRST Judicial Circuit.....	(NONE) Escambia, Okaloosa, Santa Rosa and Walton Counties.
SECOND Judicial Circuit.....	Harry Morrison, Wakulla Franklin, Gadsden, Jefferson, Leon, Liberty and Wakulla Counties.
THIRD Judicial Circuit.....	O. O. Edwards, Cross City Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee and Taylor Counties.
FOURTH Judicial Circuit.....	Nathan Schevitz, Jacksonville Wm. Herbert Fishler, Fernandina Clay, Duval and Nassau Counties.
FIFTH Judicial Circuit.....	A. P. Bule, Ocala Citrus, Hernando, Lake, Marion and Sumter Counties.
SIXTH Judicial Circuit.....	Sam Y. Allgood, Jr., New Port Richey Pasco and Pinellas Counties.
SEVENTH Judicial Circuit.....	Julian C. Calhoun, Palatka Flagler, Putnam, St. Johns and Volusia Counties.

EIGHTH Judicial Circuit.....Joe Hill Williams, Lake Butler
Alachua, Baker, Bradford, Gilchrist, Levy and Union Counties.

NINTH Judicial Circuit.....Thad H. Carlton, Ft. Pierce
Hubert E. Griggs, Cocoa
Brevard, Indian River, Martin, Okeechobee, Orange, Osceola,
St. Lucie and Seminole Counties.

TENTH Judicial Circuit.....L. Grady Burton, Wauchula
Hardee, Highlands and Polk Counties.

ELEVENTH Judicial Circuit.....Harvie S. DuVal, Opa-Locka
Dade County.

TWELFTH Judicial Circuit.....E. M. Magaha, Fort Myers
L. J. Robbins, Arcadia
Charlotte, Collier, DeSoto, Glades, Hendry, Lee, Manatee and
Sarasota Counties.

THIRTEENTH Judicial Circuit.....Fred Tupper Saussy, Jr., Tampa
Hillsborough County.

FOURTEENTH Judicial Circuit.....J. Frank Adams, Blountstown
Bay, Calhoun, Gulf, Holmes, Jackson and Washington Counties.

FIFTEENTH Judicial Circuit.....Dwight L. Rogers, Jr., Ft. Lauderdale
Broward and Palm Beach Counties.

COUNTY JUDGES, 1949-1953

<i>County</i>	<i>Name</i>	<i>County Seat</i>
Alachua.....	H. H. McDonald.....	Gainesville
Baker.....	W. M. Brown.....	MacClenny
Bay.....	Joseph W. Bailey.....	Panama City
Bradford.....	E. K. Perryman.....	Starke
Brevard.....	Vassar B. Carlton.....	Titusville
Broward.....	Boyd H. Anderson.....	Ft. Lauderdale
Calhoun.....	Roy S. Gaskin.....	Blountstown
Charlotte.....	John T. Rose, Jr.....	Punta Gorda
Citrus.....	O. Frank Scofield.....	Inverness
Clay.....	Thomas J. Rivers.....	Green Cove Springs
Collier.....	S. S. Jolley.....	Everglades
Columbia.....	G. A. Buie, Jr.....	Lake City
Dade.....	W. F. Blanton.....	Miami
DeSoto.....	Gordon Hays.....	Arcadia
Dixie.....	L. G. Gunter.....	Cross City
Duval.....	McKenney J. Davis.....	Jacksonville
Escambia.....	Harvey E. Page.....	Pensacola
Flagler.....	E. W. Johnson.....	Bunnell
Franklin.....	Raymond M. Witherspoon.....	Apalachicola
Gadsden.....	Frank B. Thrower.....	Quincy
Gilchrist.....	M. G. Akins.....	Trenton
Glades.....	J. M. Couse.....	Moore Haven
Gulf.....	J. E. Pridgeon.....	Wewahatchka
Hamilton.....	Ernest Rutledge.....	Jasper
Hardee.....	Clyde Maddox.....	Wauchula
Hendry.....	R. M. Harris.....	LaBelle
Hernando.....	Monroe W. Treiman.....	Brooksville
Highlands.....	Howard G. Livingston, Jr.....	Sebring
Hillsborough.....	William C. Brooker.....	Tampa
Holmes.....	Klein McDonald.....	Bonifay

Indian River.....	Otis M. Cobb.....	Vero Beach
Jackson.....	Robert L. McCrary, Jr.....	Marianna
Jefferson.....	Thomas B. Bird.....	Monticello
Lafayette.....	Guy M. McClain.....	Mayo
Lake.....	W. Troy Hall, Jr.....	Tavares
Lee.....	Archie M. Odom.....	Fort Myers
Leon.....	James C. Gwynn.....	Tallahassee
Levy.....	Wilbur F. Anderson.....	Bronson
Liberty.....	R. H. Deason.....	Bristol
Madison.....	Curtis D. Earp.....	Madison
Manatee.....	H. C. Parham.....	Bradenton
Marion.....	D. R. Smith.....	Ocala
Martin.....	Arthur R. Clonts.....	Stuart
Monroe.....	Raymond R. Lord.....	Key West
Nassau.....	H. V. Burgess.....	Fernandina
Okaloosa.....	Wilbur F. Osburn.....	Crestview
Okeechobee.....	T. W. Conely, Jr.....	Okeechobee
Orange.....	Victor Hutchins.....	Orlando
Osceola.....	O. P. Johnson.....	Kissimmee
Palm Beach.....	Richard P. Robbins.....	West Palm Beach
Pasco.....	Orvil L. Dayton, Jr.....	Dade City
Pinellas.....	Jack F. White.....	Clearwater
Polk.....	Chester M. Wiggins.....	Bartow
Putnam.....	Causey S. Green.....	Palatka
St. Johns.....	Chas. C. Mathis, Jr.....	St. Augustine
St. Lucie.....	Flem C. Dame.....	Ft. Pierce
Santa Rosa.....	Wm. A. Bonifay.....	Milton
Sarasota.....	John D. Justice.....	Sarasota
Seminole.....	O. Douglas Stenstrom.....	Sanford
Sumter.....	P. B. Howell.....	Bushnell
Suwannee.....	J. M. Hearn.....	Live Oak
Taylor.....	Byron Butler.....	Perry
Union.....	J. R. Townsend.....	Lake Butler
Volusia.....	Robt. H. Wingfield.....	DeLand
Wakulla.....	A. L. Porter.....	Crawfordville
Walton.....	Joe Dan Trotman.....	DeFuniak Springs
Washington.....	Sam D. May.....	Chipley

EXPLANATION

Certain material which generally sets forth the theory upon which the writer bases his conclusion has been omitted from the following opinions and wherever anything has been omitted such omission is indicated by a series of dots (. . . .). From the position of these dots it can be determined just where such omitted material was located in the original opinion in relation to that portion used herein. It has been necessary to eliminate this surplus material in the interest of economy and book size since the number of opinions we are called upon to make has greatly increased beyond all expectations. Whenever it becomes desirable to have the full content of any particular opinion a copy of the original opinion in full may be obtained from this office upon request.

CHAPTER I

CONSTRUCTION OF STATUTES

DEFINITIONS

October 21, 1949.—049-502.

MUNICIPALITIES—EMPLOYEES SUBJECT TO FEDERAL
WITHHOLDING TAX—§1.01 F. S.

QUESTION: Are municipal employees subject to the federal withholding tax?

To: *Mr. H. L. Black, Clerk, City of Oldsmar, Oldsmar, Florida:*

..... federal withholding tax is applicable to employees of municipalities.

CHAPTER II

STATE ORGANIZATION

ADMISSION INTO UNION; CONCESSIONS; STATE BOUNDARIES

June 20, 1949.—049-265.

JURISDICTION OVER FEDERALLY ACQUIRED LAND, GOVERNOR MAY CEDE—AVON PARK AIR FORCE BASE—§6.04 F. S.

QUESTION: Is a proposed deed of cession of jurisdiction from the Governor to the United States, as described below, and covering 107,054.29 acres of land in Polk and Highland Counties for Avon Park Air Force Base, correct and legally sufficient under the provisions of Section 6.04, Florida Statutes?

To: *Honorable Frank S. Wright, Assistant to Governor Warren:*

.....
..... in my opinion the above question properly is answered as follows:

The application of the United States for this cession of jurisdiction, which refers to the particular land involved and the proposed deed of cession setting forth a boundary description of the tract, would seem to meet the requirements of Section 6.04, Florida Statutes, that the application for deed of cession shall set forth "the land sought to be ceded by convenient metes and bounds." In Opinion 047-82 (AGR, 1947-1948, pages 11 and 12) my immediate predecessor in office held that such a description as used in this proposed deed met the requirements of the above quoted portion of Section 6.04. I agree with such opinion and, hence, determine that the description in the proposed deed is sufficient.

The Governor properly may, in his discretion, execute and deliver such deed.

COUNTY BOUNDARIES

August 30, 1949.—049-416.

COUNTY LANDS, TRANSFER TO OTHER COUNTY—TAXES, ASSESSMENT & COLLECTION—CHAPTER 25440, ACTS 1949

QUESTION: Where the legislature of this state, after the first of January of any year, transfers fifteen sections of lands from one county to another, without designating by which county the taxes on the lands in question should be assessed for current taxes, by which county should the said taxes be assessed and by which county collected?

To: *Honorable Milton D. Wilson, Bartow, Florida:*

The legislature of this state, by Chapter 25440, Laws of Florida, Acts of 1949, amended Sections 7.51 and 7.53, Florida Statutes, so as to transfer fifteen sections of land from Pasco County to Polk County.....

.....

..... we are of the opinion that the fifteen sections of land in question should have been assessed by the tax assessor of Pasco county, because a part of that county upon the tax day, but that upon completion of the tax roll of Pasco county the assessments of said fifteen sections should have been certified by the tax assessor to the county taxing officials of Polk county for further proceedings. The values placed upon the said fifteen sections of land should not have been considered as a part of the total assessed value of Pasco county for the purpose of fixing the millage of that county but should have been considered as a part of the assessed value of Polk county. The taxes against the lands for 1949 should have been extended by the tax assessor of Polk county. Any fees paid the tax assessors should be calculated pursuant to Section 193.69, Florida Statutes.

March 20, 1950.—050-138—049-416.

COUNTIES—ASSESSMENT—DELINQUENT TAX LANDS TRANS-
FERRED FROM ONE COUNTY TO ANOTHER—CHAPTERS 25440.
26347, ACTS '49 APPLIABLE

QUESTION: Where certain lands, encumbered by county owned delinquent taxes or vested in the county by reason of delinquent taxes, are transferred from said county to another county, should the county from which such lands were transferred, and which holds a tax lien upon said lands or the title thereto by reason of said delinquent taxes, place such lands upon its current tax roll?

To: *Honorable C. M. Gay, State Comptroller:*

..... Whether or not the lands upon which Pasco county holds tax sale certificates should be extended upon the current tax rolls of Polk County, and whether or not the tax delinquent lands owned or claimed by Pasco county are exempt or subject to taxation in Polk county on the current tax rolls, are not within the inquiry.

CHAPTER III

LEGISLATIVE DEPARTMENT

SENATE AND HOUSE OF REPRESENTATIVES

May 24, 1950—050-253

CITY COMMISSIONER ELECTED STATE REPRESENTATIVE— RESIGNATION REQUIRED—ART. III, §3, STATE CONST.

QUESTION: Where a commissioner of the City of Miami has been nominated as a candidate for Representative in the State Legislature, when must said commissioner resign his office as city commissioner, in view of the provisions of the Charter of the City of Miami which prohibits a commissioner from holding any other public office?

To: *Honorable Robert L. Floyd, City Commissioner, Miami, Dade County, Florida:*

..... a member of the city commission of the City of Miami must forfeit his office as such city commissioner immediately upon his election as a member of the State Legislature, at the general election to be held in November, 1950.

LEGISLATION

March 7, 1949—049-87

ADVERTISEMENT—DELINQUENT TAX ROLL—ASSESSMENT— COLLECTION—LOCAL ACT INVALID

QUESTION: Would a local act be valid if it eliminated the statutory requirement of publication of the delinquent tax roll and provided as a substitute the publication of a general notice to the effect that taxes are now delinquent and will be sold on the usual date, such law also requiring posting of a list of the delinquent lands at the courthouse door?

To: *Honorable Howard E. Wilson, Tax Collector, Monroe County, Key West, Florida:*

..... Section 20 of Article III of the Constitution prohibits local laws "for assessment, and collection of taxes for State and county purposes." Advertising the delinquent tax roll is part of the collection process and hence falls within a negative answer to your question.

April 5, 1949—049-141

DEPUTY CONSTABLE—APPOINTMENT BY LOCAL BILL— PROHIBITED

QUESTION: Whether appointment of deputy constable may be authorized by local bill?

To: *Honorable Neil E. McMillan, City Attorney, Delray Beach, Florida:*

.....

..... I am of the opinion that appointment of a deputy constable under the authority of a local bill would violate Article 3, Section 20, Florida Constitution. Therefore, your question is answered in the negative.

April 6, 1949—049-142

ENROLLING REPORT—REFERENCE BY NUMBER ALONE—
IDENTIFICATION—LEGISLATURE—POWER—
RULES OF PROCEDURE

QUESTION: Is reference to a bill or joint resolution in the enrolling report of the Senate by number without setting forth the title sufficient to identify same?

To: *Honorable Newman C. Brackin, President, Senate of Florida, Capitol Building, Tallahassee, Florida:*

In an opinion dated March 11, 1948, given to Mr. Allen Morris, who was designated by House Resolution No. 38 of the 1947 Session of the Legislature as the reviser of rules of procedure of the House..... You will note that Question No. 3 presents substantially the same problem, which you have stated above.

..... the only requirement concerned with reference to the use of a number and title is to sufficiently identify the bills with certainty.....the use of both the number and the title would make the identification of the bill more definite and certain.

It is however a fact that there is no legal obstacle which would prevent reference to a bill or joint resolution in the enrolling report of the senate by number, without setting forth the title. The definiteness and the certainty in the use of the number alone would depend largely upon the mechanical organization for verifying in the enrolling room.

The senate in its own discretion may determine its own rules of procedure following the fulfillment of all legal requirements, in the passage of Legislation, and is its own judge as to whether reference by number alone in the enrolling report is sufficient to identify the same.

June 25, 1949—049-284

EXTRAORDINARY SESSION—LOCAL BILLS, CONSIDERATION
AND NOTICE—TWO-THIRDS VOTE A4 S8, A3 S21,
§§11.02, 11.03 F. S.

QUESTIONS: 1. If the Governor convenes the Legislature in extraordinary session, may such body consider special or local bills?

2. If the answer to the first question is in the affirmative, what notice should be given of intention to apply at such special session for passage of a local or special bill?

To: *Honorable Frank S. Wright, Assistant to the Governor:*

(1) regardless of the limited matter or matters set forth in the Governor's proclamation for extraordinary session, or that he

may call to the Legislature's attention while in session, by a two-thirds vote of each House, local or special acts could be considered.

(2) The following are conditions which must be met concerning introduction of local or special bills, including such bills establishing or abolishing municipalities, providing for their government, jurisdiction and powers, or amending the same:

(a) Notice of intention to apply to the Legislature for passage of a special or local bill shall be published in some newspaper, published in the county or counties where the matter or thing to be affected by such legislation shall be situated, one time at least thirty days before introduction of the proposed law into the legislature or, there being no such newspaper, by posting the same at not less than three public places in the county or counties where the matter or thing to be affected by such legislation shall be situated, such notice to state the substance of the contemplated law (see Article III, Section 21, Florida Constitution; Sections 11.02 and 11.03, Florida Statutes).

(b) Affidavit of proof of publication of such notice of intention to apply to the legislature for passage of such a bill may be made in substantially the general form set forth in Section 11.03, Florida Statutes, it being provided, however, that such form shall not be exclusive. Such proof of publication and a true copy of the notice published or posted shall be attached to the bill when introduced.

(c) *Provided*, that no publication of any such law shall be required when it contains a provision to the effect that the same shall not be operative or effective until ratified or approved at a referendum election to be called and held in the territories affected in accordance with the provision therefor contained in such bill or provided by general law (see Article III, Section 21, Florida Constitution).

September 1, 1949—049-415

EXTRAORDINARY SESSION—SCOPE OF GOVERNOR'S CALL— CERTAIN TAX LEVIES

QUESTION: Does the official call issued by the Governor calling the legislature into extraordinary session on September 7, 1949, give the legislature the authority to provide for the reallocation to the cities any state collected taxes which it may levy?

To: Hon. Stanley C. Minshall, Mayor of St. Petersburg, Florida:

.....
It is my opinion that the problem in which you are interested is a matter which properly comes within the discretion of the legislature of this state and statutes enacted by the legislature based upon its decision that same come within the Governor's proclamation would very probably not be declared invalid by the courts unless there was a clear abuse of discretion.

September 6, 1949—049-424

STATE WELFARE BOARD—PUBLIC ASSISTANCE—LEGISLATURE MAY ENACT LAWS TO MEET NEW AGE AND RESIDENCE REQUIREMENTS

QUESTION: If, as a condition for participation in Federal grants for public assistance, a new Federal statute should require more lib-

eral provisions as to age and residence than our statute and Constitution now permit, may the legislature enact laws necessary to meet such new requirements?

To: *Honorable Sherwood Smith, Commissioner, State Welfare Board:*

.....
It is my opinion that under the proviso of Art. XIII, §3, the legislature of the State of Florida may modify the citizenship, age and residence requirements as now set out in the Constitution and statutes, to conform with Federal requirements for participation in grants to states for public assistance.

September 13, 1949—049-434

EXTRAORDINARY SESSION—SCOPE OF GOVERNOR'S CALL—
APPROPRIATIONS BILL—CHAPTER 25370, ACTS 1949

QUESTION: Is the proposed Senate Bill, title of which is as follows, "An act amending Section 10 of Chapter 25370, Laws of Florida, Acts of 1949, relating to state revenues and appropriations for the biennium 1949-1951; and relating to the powers and duties of the state budget commission in order to provide revenues to meet certain emergencies should they occur," within the Governor's proclamation convening the Florida State Legislature into extraordinary session?

To: *Hon. Newman Brackin, President of the Senate:*

.....
It is my opinion that every reasonable presumption would not serve to bring this bill within the call. Accordingly, I believe the only safe, constitutional course would be to treat the bill as being without the call and require the two-thirds vote rule.

September 30, 1949.—049-461.

LEGISLATION—EXTRAORDINARY SESSION—DOG TRACK TAX
NOT WITHIN PURVIEW GOVERNOR'S CALL—CONTROVERSIAL
ISSUE

QUESTION: "House Bill 80-X which relates to the lowering of the amount of tax to be paid by a certain dog track was introduced in the House of Representatives. This bill did not come within the purview of any of my calls and although it was considered and passed in the House by a two-thirds vote and was considered in the Senate by a two-thirds vote, the vote on final passage in the Senate was 20 to 15, which was not the required constitutional two-thirds vote."

In view of the facts above stated, was this bill constitutionally enacted into law in view of the provisions of Article IV, Section 8, Florida Constitution?

To: *Honorable Fuller Warren, Governor:*

Since the Governor has stated that House Bill 80-X did not come within the purview of any purpose in any of his calls for the recent extraordinary session of the legislature, it is assumed without question that such bill was not included in any of such purposes.

.....
It is my judgment that a bill in the Senate, not within the purview of the Governor's purposes for an extraordinary session of the Legisla-

ture on final vote must be passed by not less than a two-thirds vote of the Senate in order to bring it within the exception in Article IV, Section 8, Florida Constitution. . . . In my opinion House Bill 80-X did not come within such exception and hence was not constitutionally adopted by the Senate. However, the apparent administrative construction now and hitherto adopted by the legislative branches is not to be lightly considered. Obviously the question is a controversial one involving the legality of legislative action which most appropriately should be determined with finality by the Florida Supreme Court. The Governor has this bill before him for consideration and in connection therewith he is confronted with certain executive constitutional powers and duties. Hence, if time will permit, it is suggested that under the authority of Article IV, Section 13, Florida Constitution, the Governor request an opinion of our Supreme Court on the question. It is believed that this course would be advisable since the question has not been passed on by our Supreme Court. Moreover it will accord to the Legislature a judicial determination of its action rather than an executive determination.

March 3, 1950.—050-101.

LEGISLATURE—CONFLICTING LAWS PASSED SAME SESSION—
REFERENDUM REQUIRED—CHAPTER 26151, ACTS OF 1949
EFFECTIVE

QUESTION: When two acts passed at the same session of a legislature, one providing that the act shall become effective immediately upon its becoming a law and the other providing for a ratification by referendum, became laws without the Governor's signature, by filing them the same day in the Secretary of State's Office, which of the 2 acts is effective?

To: Mr. W. A. McMullen, Jr., County Engineer, Pinellas County:

. it is my opinion that Chapter 26151, Laws of Florida 1949, which provides for a referendum being the later legislative enactment controls, and that the provisions thereof to be effective must be ratified by a referendum in accordance with Section 16 of said act.

CHAPTER IV

EXECUTIVE DEPARTMENT

GOVERNOR

October 11, 1949.—049-483.

BOARD OF COMMISSIONERS OF STATE INSTITUTIONS—PUBLIC FUNDS NOT AVAILABLE FOR INDIGENT PERSONS IN PRIVATE INSTITUTIONS

QUESTION: Lawfully may the Board of Commissioners of State Institutions expend or authorize the expenditure of public funds for the maintenance and care of indigent old people in private institutions in this state?

To: Honorable Fuller Warren, Governor of Florida, Capitol:

..... the question is answered in the negative.

June 9, 1949—049-256.

RENT CONTROL—LIFTING RESTRICTIONS IN MUNICIPALITIES —203(J) (3) FED. HOUSING & RENT ACT OF 1949

QUESTION: What duty devolves upon the Governor under Section 203(j) (3) of the Federal Housing and Rent Act of 1949, when there is presented to him a certified copy of a resolution of the governing body of a municipal corporation finding that there no longer exists a necessity for rent control in the municipality, such resolution indicating that it was adopted in pursuance of the requirements of the aforesaid provision of law?

To: Honorable Frank S. Wright, Assistant to Governor Warren:

.....

..... the duty devolves upon the Governor to approve or not approve this resolution. Should the Governor see fit to approve the resolution, he may do so by endorsing his approval on the original certified copy, or he may do so by a separate instrument, identifying the resolution approved.

June 7, 1949.—049-242.

GOVERNOR—POWER TO STRIKE "PORTION" APPROPRIATION BILL

QUESTION: Does the Governor have the power, under Article IV, Section 18 of the Florida Constitution, to strike out the words "including salary of \$6500 per annum" from Section 1, item 16a of the appropriation bill, before approval thereof?

To: Honorable Fuller Warren, Governor:

.....

It follows that the Governor does have the power to strike out a portion of any appropriation bill.

January 25, 1950.—050-45.

VACANCY IN OFFICE—EXPIRATION OF TERM—INCUMBENT IN OFFICE—§14, ART. XVI, CHAPTERS 24815, 26152, ACTS OF 1949

QUESTION 1. Two members of the Pinellas Utility Board, heretofore appointed by the Governor of Florida for two-year terms in pursuance of Chapter 24815, Special Acts of 1947, have expired. Does such a vacancy in office with respect to these two members exist so that it is the duty of the Governor to make appointments to fill these vacancies?

QUESTION 2. Where a member of the aforesaid Board, who was lawfully appointed from a certain district as required by the act mentioned and, after appointment moved out of that district and now resides in another district, does such create a vacancy in his office so that it is the duty of the Governor to fill such vacancy by appointment?

To: Hon. Fuller Warren, Governor of Florida:

.....
It is here assumed that no successors to fill the offices of the two members of said Board here involved were elected at the "regular State and County election held immediately prior to the expiration" of such members two-year terms; and this opinion is conditioned upon such assumption.

.....
(1) Conditioned as above stated, it appears that the Governor may consider vacancies exist in the offices of the two members of said Board here involved and make appointments filling the same.

(2) The removal of a member of the Board during his term of office from the district in the county from which he was required to be elected or appointed creates such a vacancy in office as to authorize the Governor to fill such vacancy by appointment in pursuance of the provisions of Section 1, Chapter 24815, as amended by Section 1 of Chapter 26152.

ATTORNEY GENERAL

January 23, 1950—050-38

FLORIDA STATUTES, 1949—FREE DISTRIBUTION—SALE AND DISTRIBUTION—SECTION 16.50 (2) (a) (b), F. S. '49

QUESTION: Under the provisions of Section 16.50 Florida Statutes, as amended by Chapter 25034, Laws of Florida, Acts of 1949, will the Secretary of State be authorized to send free the edition of Volume I, Florida Statutes, 1949, now being printed, to officers, boards and agencies of the State as set forth in amended Section 16.50 (2) (a) and (b), notwithstanding the fact that the Secretary of State heretofore has furnished such officers, boards and agencies a free copy of Volume I, Florida Statutes, 1941?

To: Honorable R. A. Gray, Secretary of State:

Under Section 16.50(2), as amended, when Volume I, Florida Statutes, 1949, is available for delivery, free copies thereof shall be furnished to the officers, boards and agencies under the circumstances and as described in amended Section 16.50(2) (a) and (b), notwithstanding the fact that heretofore there may have been furnished such

officers, boards and agencies free copies of Volume I, Florida Statutes, 1941.

COMPTROLLER

February 4, 1949—049-41

STATE EMPLOYEES—HEADS OF DEPARTMENTS MAY SIGN
REQUISITIONS FOR EMPLOYEE'S COMPENSATION—A16
S3, 17.03, 17.07, 17.08, 17.09

QUESTION: May the State Comptroller issue warrants for the compensation of state employees without a requisition signed by the said employee for such compensation being filed with the said comptroller?

To: *Honorable C. M. Gay, State Comptroller, Tallahassee, Florida:*

.....
..... the above question may be answered in the affirmative provided there be filed with the Comptroller a proper voucher, executed by the officer or head of the employing office, department or agency or by some other person duly authorized, upon which a warrant may be issued. No attempt is made in this opinion to determine what are officers and what are employees within the above statutes and laws.

October 13, 1950—050-490

STATE WARRANTS—CHANGE IN PRESENT FORMS—MAY
BE EXPRESSED IN ARABIC NUMERALS—REQUIREMENTS

QUESTION: In the warrants now used by the State Comptroller in making payment of claims against the State, the amount is written in two places on the warrant, to wit, "Exactly \$..... and cents, \$.....," with the name of the payee being written on a separate line; may the said warrant be changed in form so that the amount will appear upon the same line with the name of the payee and so that the amount will be written only one time?

To: *Honorable C. M. Gay, State Comptroller:*

In the light of the above observation, departmental construction and authorities, we do not think that it is necessary that the amount appear more than one time upon the warrant and that it may be expressed in Arabic numerals instead of being written out in words at length.

TREASURER

July 18, 1949—049-332

EVERGLADES DRAINAGE DISTRICT—SAFE-KEEPING
RECEIPTS—§§18.11(2) 18.21

QUESTIONS: 1. May safekeeping receipts, as contemplated by Chapter 25419, Laws of Florida, Acts of 1949, be accepted by the State Treasurer in lieu of the United States bonds of said district required to be deposited with him in pursuance of Section 4 of Chapter 25211, Laws of Florida, Acts of 1949?

2. If such safekeeping receipts may be so accepted by the State

Treasurer, what change or changes should be made in the form prescribed by Section 18.11(2), Florida Statutes?

3. If such safekeeping receipts may be accepted by the State Treasurer, will it be necessary for him to secure insurance coverage on securities held under such receipts?

4. The request for opinion sets forth a proposed schedule of operations suggested by the Treasurer of Everglades Drainage District in connection with the purchase, safekeeping and sale of U. S. Government securities, the property of said district. Is such proposed procedure in order and conformity with the requirements of said Chapter 25211?

To: *Honorable J. Edwin Larson, Insurance Commissioner:*

The above questions are answered in their numbered order as follows:

(A). it reasonably appears that the state treasurer may accept safekeeping receipts, in pursuance of the authority of Chapter 25419, in lieu of such bonds. It is here pointed out that the State Treasurer is not *required* to accept such receipts in lieu of the actual deposit of such securities with him.

(B). Obviously, the form set forth in Section 18.11(2) must be changed to meet the requirements of the circumstances here found.

The following is suggested as a form of safekeeping receipt which may be used here:

(Note: Form of receipt is set out in full.)

(C). To remove all doubt concerning his liability with respect thereto, it is recommended that as a condition to acceptance of safekeeping receipts for said securities, he be furnished by the district a policy or policies of insurance issued to him, adequately insuring him against liability for loss of such securities, or any of them.

(D). The procedure outlined above appears to be in conformity with the requirements of Chapter 25211, subject to the following recommended changes in paragraphs 2, 3 and 4:

(Note: Recommended changes are set forth.)

July 20, 1950—050-352

SECURITY TO SECURE STATE DEPOSITS—USE AS—CERTIFICATES OF INDEBTEDNESS—Sections 18.10, 18.11,
FLORIDA STATUTES

QUESTION: Are "certificates of indebtedness" issued or proposed to be issued by a county in connection with courthouse and/or jail construction under Sections 135.01 and 135.02, Florida Statutes, acceptable as securities to be given by banks of this state in connection with deposit of moneys of the state therein, as contemplated by Sections 18.10 and 18.11, Florida Statutes, 1949?

To: *Honorable J. Edwin Larson, State Treasurer:*

Unless the "certificates of indebtedness" here issued or contemplated to be issued are in pursuance of the full requirements of Section 6, Article IX, Florida Constitution, and related statutory requirements, they may not be accepted by the state as security for deposit of state funds, as required by Sections 18.10 and 18.11.

CHAPTER V

JUDICIARY DEPARTMENT

SUPREME COURT OF FLORIDA

January 31, 1950.—050-44.

COMMON LAW RULES—APPLICATION TO COUNTY JUDGE'S COURT—SEC. 25.47, F.S. '41

QUESTION: Are the Florida common law rules recently adopted by the Supreme Court and now in force and effect, pursuant to the authority granted under Chapter 21955, Laws of Florida, Acts of 1943, now Section 25.47, Florida Statutes, applicable to common law proceedings in county Judge's courts, or to any of such proceedings?

To: James C. Gwynn, Leon County Judge:

Section 25.47, Florida Statutes, authorized the adoption of the rules in question for actions at law in the circuit courts, civil courts of record and county courts and the court's order of adoption recites that said rules were "adopted as the rules which shall govern the pleading, practice and procedure in the Circuit Courts, Civil Courts of Record and County Courts of the State." It therefore, seems clear that said rules are not applicable to county judges' courts, unless by reason of some statute or constitutional provision. In this connection we might mention that said rules do not purport to be applicable to the Court of Record for Escambia County, Florida, or to the Statutory Court of Record for Pasco County, Florida.

The statute under which the above mentioned court rules was adopted expressly authorized the Supreme Court to adopt rules, for the said circuit courts, civil courts of record and county courts, in conflict with existing statutes. We find no such power to adopt, either directly or indirectly, rules of practice governing practice in the county judges' courts in conflict with existing statutes.

Section 36.09, Florida Statutes, relative to the powers, practice and pleadings of county judges' courts in civil cases, provides that the rules of practice and pleading in said courts "shall be the same as those established by law for justice of the peace courts." Section 81.01, Florida Statutes, provides that in justice of the peace courts "*all actions, except those for goods sold, work and material, money lent, money paid, money received, accounts stated and for the hire of goods or property, shall be commenced by a summons issued by the justice. In such suits the rules of pleading and practice governing the circuit courts shall prevail and be enforced*, except there shall be two rule days in each month. The exception mentioned in said Section 81.01 appears to be the common counts for which Section 81.12, et seq., Florida Statutes, prescribed the pleading and practice.

Referring to Section 25.03, Florida Statutes, we find that the Supreme Court is also authorized to adopt rules of pleading and practice for county judges' courts and justice of the peace courts, however, such

rules *may not be inconsistent with law*. Should we hold that the rules of pleading and practice governing the circuit courts, as promulgated by the Supreme Court pursuant to Section 25.47, Florida Statutes, (formerly Chapter 21955, Laws of Florida, Acts of 1943), are applicable, by reason of Sections 36.09 and 81.01, Florida Statutes, to actions at law in the county judges' courts, we would be recognizing rules inconsistent with law.

In the light of these observations we feel that the above question should be answered in the negative, although we feel that a good argument might also be made in favor of an affirmative answer.

CIRCUIT COURTS, CIRCUITS, JUDGES, ETC.

March 9, 1949.—049-93.

CIRCUIT JUDGES—EXPENSES—TRAVEL BETWEEN CITIES— HOME COUNTY—MILEAGE COMPUTED—LEGAL REQUIREMENTS

QUESTION: In one of the counties of this State there are three municipalities, one of which is the home of the circuit judge, another the county seat, and the third designated here as "A". On occasions the judge holds hearings at "A". Is he entitled to expenses, (1) between his home and the county seat; and (2) between his home and "A"?

To: Honorable Truman G. Futch, Jr., Circuit Judge, Leesburg, Florida:

.....

(1) The judge is not entitled to such expenses between his home and the county seat.

(2) He is entitled to expenses between his home and "A" when he goes to the latter place under the circumstances mentioned, provided, that mileage computed shall not exceed the mileage between the county seat and "A". It is here noted that my predecessor in opinion No. 042-50 of this office held in effect that when a circuit judge, to accommodate lawyers, holds court at a place in the home county of the judge which is not the county seat, the judge is entitled to expenses in connection with going to and coming from that place. It is not apparent from this opinion whether the county seat was the actual residence of the circuit judge specifically there involved. The preceding answer to the second question is not at variance with such former opinion, but it does limit the mileage collectable to that actually travelled, provided that in no event mileage computed exceeds the mileage between the county seat and the place where hearings are held in the county.

April 4, 1949.—049-139.

CIRCUIT JUDGES—DUTIES AND POWERS—EFFECT OF SECTIONS 26.47, 26.52, F. S. '41—CHAPTER 23892, ACTS 1947—SPECIAL AND REGULAR ASSIGNMENTS

QUESTION: 1. Is Section 26.47, F. S. A. applicable when a Circuit Judge is assigned to another circuit by the Governor?

QUESTION: 2. Is Section 26.52 F. S. A. applicable to official duties by a Circuit Judge within his own circuit, and in attending official conferences and meetings?

QUESTION: 3. Is Chapter 23892, Acts of 1947, applicable to Circuit Judges?

To: *Honorable George E. Holt, Circuit Judge, Miami, Dade County, Florida:*

In answer to your first question, it is my opinion that Section 26.47 above mentioned applies to, and is applicable to the cases of Circuit Judges assigned to another Circuit by the Governor. . . .

In reply to your second question, it is my opinion that Section 26.52 applies only to the performance of official duties by a Circuit Judge within his own Circuit, as well as attendance at official conferences and meetings.

In reply to your third question, it is my opinion that Chapter 23892, Acts of 1947, applies only to officers and employees generally, and not to Circuit Judges. . . .

STATE ATTORNEYS; POWERS, DUTIES, ETC.

June 30, 1949.—049-288.

ASSISTANT STATE ATTORNEY—CHAIRMAN COUNTY EXECUTIVE COMMITTEE, AS—CHAPTER 25138, ACTS 1949

QUESTION: Properly may a person who is an Assistant State Attorney act as Chairman of his political party's County Executive Committee in view of the provisions of Chapter 25138 as amended by Chapter 25360, Laws of Florida, Acts of 1949?

To: *Honorable Fred T. Saussy, Jr., Assistant State Attorney, Tampa, Florida:*

.

I find nothing in the above law which prohibits an Assistant State Attorney acting as Chairman of his political party's County Executive Committee. Hence, the question is answered in the affirmative.

It is quite obvious that an Assistant State Attorney could violate the provisions of the above law; however, the normal and expected functions of the Chairman of a County Executive Committee would not seem to offend the prohibitive features of the Act mentioned.

June 23, 1950.—050-310.

COUNTY SOLICITORS—DISQUALIFICATION—ACTING SOLICITOR—POWER TO SUMMON WITNESSES—SECTION 22, CHAPTER 22837, ACTS 1945—PASCO COUNTY

QUESTIONS: 1. When the county solicitor files his certificate of disqualification, should the judge of said court pass upon the legal sufficiency of such qualifications, or should he upon the filing of such certificate of disqualification proceed with the immediate appointment of an acting county solicitor?

2. Is a county solicitor authorized to disqualify himself in the handling of criminal charges against a defendant merely because he has had personal difficulties with the defendant?

3. In the event that a county solicitor certifies to his disqualification to handle criminal charges against a named defendant and the

court appoints an acting county solicitor, should the court in the making of such appointment authorize or direct the acting county solicitor so appointed by him, to investigate charges against the named defendant, when no information has yet been filed against such defendant or other criminal proceedings instituted, and would the acting county solicitor have the authority of the county solicitor to summon witnesses to appear before him to testify as to such alleged charges.

To: *Honorable W. Kenneth Barnes, Judge, Court of Record, Dade City, Florida:*

AS TO QUESTION 1

.....

Therefore, it is my opinion that when the county solicitor files his certificate of disqualification in the Court of Record of Pasco County, it is the judge's duty to determine whether the county solicitor is in fact disqualified.

AS TO QUESTION 2

.....

Therefore, it is my opinion that the question of whether the county solicitor is authorized to disqualify himself in handling a criminal charge against a defendant because of previous personal difficulties with the defendant is to be determined by the nature and effect of the personal difficulties. If it is properly alleged and established that the county solicitor is so prejudiced against the defendant by reason of their former difficulties that he cannot fairly try the defendant, then the county solicitor is subject to being disqualified. The proof can be made in either of two ways, viz., (1) by direct proof that such a degree of prejudice actually exists, or (2) by proof which leads to the logical conclusion that such a degree of prejudice exists. The determination of whether such a degree of prejudice is properly alleged and proved is for the court to make.

.....

AS TO QUESTION 3

When an acting county solicitor is appointed because of the county solicitor's disqualification to handle criminal charges against a named defendant, I think that it would be proper for the order of appointment to direct the acting county solicitor to investigate such charges. The very purpose of the appointment is to have the charges investigated and appropriate action taken.

It is not necessary that a prosecution actually be pending in order to justify the appointment of an acting county solicitor to investigate and, if the law and facts warrant, file an information and prosecute the defendant.

.....

The acting county solicitor of Pasco County has the authority of the county solicitor to have witnesses summoned before him to give testimony about the alleged offense, because Section 22 of Chapter 22837 specifically provides that the acting county solicitor, while so acting, shall "have and exercise all the powers and duties of the County Solicitor," and one of the powers of the county solicitor is to thus have witnesses summoned before him.

December 16, 1949.—049-589.

STATE ATTORNEY AS CITY ATTORNEY—APPOINTMENT VALID

QUESTION: Does §15, Art. 16 of the Florida Constitution preclude a State Attorney from serving as City Attorney, which is appointive, during his tenure as State Attorney?

To: *Honorable J. D. McNair, Mayor, City of Lake Wales, Lake Wales, Florida:*

.....

Since a city attorney is not considered a state officer within the meaning of the constitutional prohibition, it is my opinion that the state attorney may also serve as city attorney.

June 2, 1949.—049-241.

CLERK OF THE CIRCUIT COURT

LIENS—JUDGMENTS—RECORD OF FOREIGN JUDGMENT—
FOREIGN JUDGMENT BOOK—JUDGMENT LIEN RECORD—

§§28.21, 55.10

QUESTION: 1. Did Section 28.21 and 55.10, Florida Statutes, 1941, (Chapter 19270, acts of 1939) eliminate the use of foreign judgment books in this state?

2. Where should foreign judgments entered prior to June 5, 1939, be recorded when presented to the clerk of the circuit court for record?

3. Where should foreign judgments entered on or after June 5, 1939, be recorded when presented to the clerk of the circuit court for record?

4. Where a judgment of the circuit court has been entered in the minute books of such court since June 5, 1939, should it be recorded in the judgment lien record in order to become a lien upon real property?

5. Define judgments and decrees as used in Section 55.10, Florida Statutes, 1941.

To: *Miss Thelma Lewis, Clerk Circuit Court, Jasper, Florida:*

The legislature of 1939, by Chapter 19270, provided for a judgment lien record in the offices of the clerks of the circuit court,

..... It is evident that the legislature, when it adopted the Florida Statutes, intended to either consolidate or authorize the consolidation of the old foreign judgment book (under Section 3076, Revised General Statutes, 1920) and the judgment lien record (under Chapter 19270, Acts 1939) into a single record book. Although Chapter 19270, Acts of 1939, may not have eliminated or abolished the "record of foreign judgment" required by prior law, the adoption of the Florida Statutes in 1941, authorized the consolidation of them into "a judgment lien record and record of foreign judgments." This answers the first question.

Under Section 55.08, 55.09 and 55.10, Florida Statutes, judgments entered prior to as well as on and after June 5, 1939, should be recorded in the "judgment lien record and record of foreign judgments" provided pursuant to Section 28.21(11), Florida Statutes. As to judgments entered prior to June 5, 1939, such record is a foreign judgment record but as to judgments entered on or after said June 5, 1939, such record is a judgment lien record. This answers the second and third questions above stated.

. The fourth question is answered in the affirmative.
. It is evident that the statute in question has reference to judgments and decrees for the payment of money and not to other type judgments and decrees. This answers the last question.

February 4, 1949.—049-40.

**COMPENSATION FOR KEEPING RECORD OF CONVICTIONS—
NAMES OF CONVICTED CRIMINALS SHOULD BE CERTIFIED**

QUESTIONS: 1. As to the proper amount being charged for keeping record of convicted criminals.

2. Should all cases be reported on record, or only convictions?

To: Honorable F. A. Parker, Clerk, Circuit Court, Perry, Taylor County, Florida:

In answer to your first question, I beg leave to state that I believe that your calculation as set forth in your letter is correct, that is: 10¢ for filing; recording 25¢; indexing 10¢, total 45¢.

In reply to your second question, I beg leave to state that only the names of convicted criminals should be certified.

March 30, 1949.—049-132.

AFFIDAVITS OF DOMICILE—BOOK IN WHICH RECORDED—§222.17

QUESTION: Please advise where affidavits of domicile should be recorded?

To: Honorable George J. Dykes, Clerk of Circuit Court, Tavares, Lake County, Florida:

I wish to state that Section 222.17, Florida Statutes Annotated is the applicable statute, which provides that the affidavit should be recorded "in a book to be provided for that purpose."

April 22, 1949.—049-173.

**MORTGAGES—SATISFACTION MAY BE RECORDED WHEN NOT
WITNESSED**

QUESTION: May a satisfaction of mortgage be recorded without being witnessed?

To: Honorable Hugh B. Summers, Clerk Circuit Court, Columbia County, Lake City, Florida:

In reply thereto, I wish to state that it may.

April 22, 1949.—049-174.

**FILING PROCEDURE AND CAPIAS—CASES SENT DOWN FROM
CIRCUIT TO COUNTY COURT—§34.13**

QUESTION: Will you kindly advise me as to whether or not the Clerk of Court is empowered to file in the Criminal Progress Book of the County Court, any criminal cases that are sent down from the Circuit Court and also to issue a capias on same prior to the filing of an information by the county prosecuting attorney?

To: *Honorable A. C. Simmons, County Prosecuting Attorney, Ft. Pierce, Florida:*

In reply to your inquiry, I wish to state that under Section 34.13, the cases certified from the Circuit Court to the County Court are only cases in which an indictment has been found; and hence, I advise you that in such cases, the filing of an information is unnecessary, (Section 34.13, Florida Statutes) and that a *capias* may be properly issued without the filing of an information.

October 17, 1949.—049-494.

COURT REGISTRY FUNDS—COMMISSION FOR RECEIVING AND DISBURSING—GADSDEN COUNTY—§28.24, CH. 25,061 LAWS OF FLORIDA, ACTS OF 1949

QUESTION: Is the clerk of the circuit court of Gadsden County, Florida, entitled to the commission for receiving and disbursing court registry funds provided in and by Section 28.24, Florida Statutes, in view of the provisions of Chapter 25061, Laws of Florida, Acts of 1949?

To: *Honorable F. F. Morgan, Clerk of Circuit Court, Quincy, Gadsden County, Florida:*

.....

..... the question is answered in the affirmative; that is to say, that for the handling of court registry funds, the clerk of the circuit court of Gadsden County, is entitled to the commission in connection therewith provided by Section 28.24, Florida Statutes.

.....

December 15, 1950.—050-561.

CLERK OF THE CIRCUIT COURT—OFFICE EMPLOYEES—AUTHORITY TO HIRE—ART. V, §15, FLA. CONST.—§28.06, FLORIDA STATUTES

QUESTION: In view of Article V, Section 15 of the Florida Constitution and Section 28.06, Florida Statutes, 1949, does the clerk of the circuit court have the sole authority to hire and appoint the employees of his office who assist the clerk in the performance of his duties as clerk of the board of county commissioners?

To: *Honorable William Crawford, Clerk of the Circuit Court, Pinellas County, Clearwater, Florida:*

.....

The question is, therefore, answered in the affirmative.

OFFICIAL COURT REPORTERS

August 29, 1950.—050-426.

COUNTY OFFICIAL COURT REPORTER—COMPENSATION—SECTIONS 29.02, 29.03, FLORIDA STATUTES APPLICABLE

QUESTIONS: 1. Is the official court reporter entitled to be paid by the county the sum of twelve and one-half cents per hundred words for transcribing charges to the jury, as required by Section 918.10(2)?

2. Is the official court reporter entitled to charge and receive fifteen dollars a day for each day or fraction of a day in which such reporter shall be engaged in reporting testimony and proceedings in any civil case?

To: *Honorable H. M. Kerry, Official Court Reporter, Fourth Judicial Circuit, Jacksonville, Florida:*

AS TO QUESTION 1:

.....

A transcript filed pursuant to the requirement of Section 918.10(2) is not furnished on the demand of either party, and therefore Section 29.03 provides no compensation for such service. It is well settled that the Legislature may require services of a public official without compensation therefor, and he is not entitled to compensation unless such is provided for by law. Therefore, since the furnishing of the transcript required by Section 918.10(2) does not come within the terms of the statute providing compensation for court reporters, a court reporter is not entitled to compensation for furnishing the same.

AS TO QUESTION 2:

.....

Therefore, it is my opinion that a court reporter is entitled to charge \$15.00 per day or fraction of day for reporting a civil case if, and only if, the court approves the charge.

December 12, 1950—050-556.

CRIMINAL COURT OF RECORD—COURT REPORTER— APPEAL TRANSCRIPTS—FEES—§29.03, FLORIDA STATUTES APPLICABLE—DUVAL COUNTY

QUESTION: May the Court Reporter for the Criminal Court of Record of Duval County charge fifty cents per page for making up appeal transcripts and twenty-five cents per page for each copy thereof, with the approval of the Judge of said Court?

To: *Miss Sylvia B. Barnett, Court Reporter, Criminal Court of Record, Jacksonville, Duval County, Florida:*

.....

..... your question is properly answered in the negative.

SHERIFFS

January 20, 1949.—049-23.

SHERIFF—SCHOOL TRUSTEE—ELIGIBILITY TO HOLD DUAL OFFICES—A16 §15 FLA. CONST.

QUESTION: May a person, otherwise qualified, in a county of this state hold at the same time the offices of school trustee and sheriff?

To: *Honorable C. S. Pressley, Sheriff, Moore Haven, Glades County, Florida:*

.....

..... in my opinion the above question properly is answered as follows:

The wording, "county school officers," as used in Article XVI, Section 15, Florida Constitution, includes trustees of special tax school districts; hence a person, otherwise qualified, may hold at the same time the offices of school trustee and sheriff.

March 29, 1949.—049-148.

**SHERIFF OF GADSDEN COUNTY—FEES—ANIMALS RUNNING AT
LARGE—LOCAL ACT—CH. 24,532 LAWS OF 1949**

QUESTION: Chapter 24532, Gadsden County Local Act of 1947, prohibits the running at large of horses, cows, hogs, and other domestic animals. What fees, if any, may the sheriff charge for service in picking up such animals running at large?

To: Mr. W. D. Lines, Attorney at Law, Gardner and Lines, Quincy, Florida:

The special act made no provision for compensation to the sheriff for picking up such animals. . . . The statutes make no provision for compensation except when taken under process. . . .

April 15, 1949.—049-160.

**PRISONERS, FEEDING—FUEL FOR COOKING—SHERIFF TO
FURNISH**

QUESTION: Should fuel used for preparing food served to prisoners be paid for by the county?

To: Honorable W. A. Towles, Sheriff, Perry, Florida:

.

In my opinion the rule set forth on Page 230, Florida Sheriff's Manual on this question is correct. It states: "The fuel used in cooking is paid for by the sheriff and charged as an expense."

The question is therefore answered in the affirmative.

April 25, 1949.—049-180.

**JAILS—FEMALE PRISONERS—PAYMENT FOR MATRON SERVICES
—COUNTY COMMISSIONERS**

QUESTION: Is it the duty of a county to pay for the services of a matron in county jails when such services are required by the presence of female prisoners?

To: Honorable Sim P. Howell, Sheriff, Suwannee County, Live Oak, Florida:

I concur in an opinion rendered by the Honorable Rivers Buford as Attorney General on October 29, 1923, (Attorney General's Biennial Report 1923-1924, Page 233.)

This opinion states, ". . . . it is the direct duty of the Sheriff to provide these things if his fees are sufficient to provide them, but if in the judgment of the Board of County Commissioners they are necessary and the Sheriff's fees are insufficient to provide them, it becomes the duty of the Board of County Commissioners to make provision for the same."

June 3, 1949.—049-240.

**COSTS OF INVESTIGATIONS—LIMITATION ON RIGHT TO
RECEIVE—§30.23 F.S.**

QUESTION: "Is a sheriff entitled to a six dollar fee under Section 30.23, Florida Statutes, 1941, for all types of criminal investigations, regardless of their nature?"

To: Honorable T. Harold Williams, County Solicitor, Palm Beach County, West Palm Beach, Florida:

..... this statute limits payment of a fee for investigations to those which are made under the direction of the state's attorney, county solicitor or other prosecuting officer. Payment of the fee must also be approved by the court.

The question is therefore answered in the negative.

June 3, 1949.—049-246.

**REWARD FOR APPREHENSION OF CRIMINALS—PAYMENT
AUTHORIZED—CHARGED TO OFFICE EXPENSE**

QUESTION: Is a sheriff authorized to pay a reward for the apprehension of a criminal and charge said reward against his office expense?

To: Honorable H. T. Williams, Sheriff, Brevard County, Titusville, Florida:

The office of Attorney General has issued conflicting opinions on this question. The latest opinion, written in 1945 answered the question in the negative.

..... If it appears that the payment of a reward is the most logical means to be employed and common sense dictates that there is little hope of finding a criminal through other means, I believe that such action is justified.

.....
I am therefore of the opinion that this question must be answered in the affirmative and any opinions rendered by the office of Attorney General to the contrary are therefore overruled.

July 6, 1949.—049-307.

**GUARD AT JAIL AS DEPUTY—WIFE AS SERVANT IN THE JAIL—
AUTHORITY TO HIRE—CHAPTER 22587 LAWS OF FLORIDA**

QUESTION: 1. Is it within the discretion of the sheriff of Jefferson County to hire a man as night guard and get reimbursement from the county for salary actually paid him as guard and use that same man as a deputy sheriff in the daytime?

2. Is it permissible to hire that same man's wife as a servant in the jail?

To: Mrs. Minnie J. Cooksey, Sheriff, Jefferson County, Monticello, Florida:

..... In answer to your first question, it is my opinion that you

have ample authority to employ a guard and a servant at the county jail, each to be employed as the necessity arises in your own discretion, and that you have authority to use such guard as a deputy sheriff during the daytime.

For your information, I am informed that a similar question is now being tested in the courts of Madison County and it will probably go to the Supreme Court of Florida for final adjudication. It may be that you will want to await the decision of the Supreme Court before proceeding further.

In answer to your second question, I can see no reason why the wife of such guard cannot be employed by you as a servant in the jail, and it is my opinion that you have such authority.

August 1, 1949.—049-348.

DEPUTY SHERIFF AS DEPUTY TAX COLLECTOR—NOT
PROHIBITED

QUESTION: "Is a deputy sheriff disqualified by law from also holding the office of deputy tax collector?"

To: *Honorable Dan L. Brock, Sheriff, Washington County, Chipley, Florida:*

.....

..... your question must be answered in the negative.

September 13, 1949.—049-441.

COSTS OF INVESTIGATIONS—ARRESTS—WITH COURT
APPROVAL—SECTION 30.23, F. S. APPLICABLE

QUESTIONS: 1. Does Section 30.23, Florida Statutes, apply to sheriff's fees for arrests and investigations in both misdemeanors and felonies?

2. Where an arrest is made by a sheriff or under his authority for a crime not committed in the presence of the arresting officer, and an investigation is made by the sheriff or under his authority, either before or after the arrest, is the sheriff entitled to fees for both the arrest and the investigation?

3. Where an arrest is made by a sheriff or under his authority for a crime committed in the presence of the arresting officer, and further investigation, including the interrogation of witnesses is deemed necessary, is the sheriff entitled to fees for both the arrest and the investigation?

4. Where an investigation concerning a crime is made by the sheriff or under his authority but the perpetrator of the crime is never determined and no arrest is made, is the sheriff entitled to the fees allowed by the above section for such investigation?

To: *Honorable John F. Kirk, Sheriff, Palm Beach County, West Palm Beach, Florida:*

.....

..... the above questions are answered as follows: (1) Section 30.23, Florida Statutes, relates to and provides fees for the sheriff in

connection with both misdemeanors and felonies; (2) The sheriff, under said section, is entitled to fees for making arrests and in addition thereto fees for such investigations as are made under the direction of the judge of the court or its prosecuting officer as mentioned in said section. When the investigation is not made under such a direction or the fees are not approved by the court the sheriff is entitled to no fees for investigation; (3) The above observations as to the second question seem also applicable to the third question; (4) It is not necessary that the investigation lead to an arrest, provided it is ordered as above and the fee bill is approved by the court.

October 8, 1949.—049-480.

**FEES NOT ALLOWED FOR ARRESTS BY HIGHWAY PATROL—
FEES ALLOWED CLERK CRIMINAL COURT OF RECORD—
§§30.27, 32.12, 28.24**

QUESTIONS: (1) Is the sheriff entitled to fees in cases where an arrest is made by an officer of the state highway patrol and the defendant pleads guilty?

(2) What fees are the clerk of the criminal court of record entitled to in such cases?

To: Honorable Thomas S. Caro, Judge, Criminal Court of Record, Key West, Florida:

I enclose herewith opinion No. 048,218 rendered by my predecessor in office and in which I concur. I call your attention to Bradford, et al. v. Stoutamire, 38 So. 2d 684, in which the court said, in part:

" To allow fees to the sheriff for services rendered by the highway patrol, who is paid a salary, would be paying twice for the same service. We have no reason to suppose that this was the legislative intent."

This will answer your first question.

As to your second question, I call your attention to Section 32.12, Florida Statutes Annotated, as amended, which provides that when not otherwise provided, the compensation of the clerk of the criminal court of record shall be in fees, which shall be the same as the fees of the clerk of the circuit court in like cases. You will find in Section 28.24, Florida Statutes Annotated, the fees allowed clerks of the circuit courts. . . .

October 12, 1949.—049-499.

**COSTS OF INVESTIGATIONS ORDERED BY STATE ATTORNEY—
PLACE OF CRIME NOT MATERIAL—§30.23 F. S.**

QUESTIONS: 1. "The Sheriff of Alachua County received a telegram from some law enforcement official in Alabama asking his aid in apprehending an escaped convict belonging to Alabama who was believed to be secreting himself in Alachua County, Florida. Upon order of the State Attorney the Sheriff spent several days investigating the matter in an effort to apprehend the escaped prisoner for Alabama. The Sheriff's requisition for the cost of such investigation in due form has been presented to me for approval. Is the Sheriff entitled to his per diem for investigation under these circumstances?

2. "The Sheriff of Alachua County was requested by the Sheriff of another county in Florida to assist in the investigation of a crime committed in such other county by interviewing persons in Alachua County and otherwise investigating the matter in order to collect important evidence for the trial of the case and procure information necessary to the apprehension of the perpetrator or perpetrators of the crime in question. The Sheriff of Alachua County was ordered by the State Attorney to conduct such investigation and his bill for the usual per diem has been presented to me for approval. Should I approve this bill so that the same can be presented to Alachua County for payment?"

To: *Honorable John A. H. Murphree, Judge, Circuit Court, Gainesville, Florida:*

.....

..... both questions are therefore, answered in the affirmative.

November 28, 1949.—049-565.

**SHERIFFS—PROPERTY OF PERSONS ARRESTED—DAMAGES TO
—RESPONSIBILITY TO CARE FOR**

QUESTION: Please advise me what, if any, responsibility an officer has in taking care of an auto when he arrests the driver of the vehicle and places him in jail. If the arrest is made for driving while intoxicated or other charges, and the defendant is transferred to the officer's vehicle and carried to the jail and the auto of the defendant is left parked along the highway, where the arrest is made, is the officer responsible or liable for theft or damage to the auto of the defendant?

To: *Honorable Todd Tucker, Sheriff, Pinellas County, Clearwater, Florida:*

.....

Although as stated above, in making a lawful arrest, an officer is not responsible for the property of the person arrested, I believe it appropriate to point out that this general rule contemplates that the arresting officer will use prudence and care in seeking to safeguard the property of persons arrested and will make every reasonable effort to protect such property from theft or damage. If such care is not exercised or the property abandoned or left negligently by the roadside for an unreasonable length of time it is entirely possible that the courts might consider such an officer liable for theft or damages to the property in question.

Subject to these remarks your question is answered in the negative.

February 23, 1950.—050-117.

**SHERIFF—DENIED FEES IN ELISOR RAID ARRESTS—SECTION
939.10, F. S. '41—APPLICABLE—HARDEE COUNTY**

QUESTION: Is a sheriff entitled to a commission of 5% on sums deposited into the fine and forfeiture fund under the following circumstances: The defendants were arrested by special elisors appointed by the court and later placed in the sheriff's custody by the arresting officers. The defendants were fined and payment of the fines immediately tendered to the court. The clerk of the circuit court received

the money, constituting payment of the fine in full and upon instruction of the state attorney deposited the money to the county fine and forfeiture fund?

To: Honorable Ben Coker, Clerk of Circuit Court, Hardee County, Wauchula, Florida:

.....

Your question, under the circumstances and facts presented, is answered in the negative.

March 14, 1950.—050-127.

CONSTABLES'—WITNESS FEES—MILEAGE—SECTIONS 30.23,
902.19(4) FLORIDA STATUTES APPLICABLE

QUESTIONS: 1. Where constable approves bond in a justice of the peace court having jurisdiction, said bond made returnable to the same court, is the said constable entitled to the \$2.00 statutory fee?

2. Where constable has been legally authorized to conduct a criminal investigation, is said constable entitled to the \$6.00 statutory fee?

3. Where constable who lives 50 miles from a courthouse is subpoenaed as a witness in a case, is he entitled to witness fee and mileage?

To: Honorable Ray Whitlock, Constable, Belle Glade, Florida:

According to Section 30.23, Florida Statutes, 1941, as amended by Chapter 22587, Laws of Florida, 1945, the answer to your first question is in the affirmative.

As to your second question, it appears that if the investigation is conducted under the direction and authority of the judge of any court having criminal jurisdiction, or the state's attorney, county solicitor or other prosecuting officer, as provided in the above statute, then the constable is allowed the same fee as prescribed for sheriff in said statute, provided same is approved by said court.

.....

..... As to your third question, it is my opinion that a constable is not entitled to witness fees or to mileage when summoned to testify in criminal cases in the local courts of the county in which he holds office, or has his residence.

March 28, 1950.—050-154.

SHERIFFS' INVESTIGATIONS—FEES—AMOUNT—MANNER OF
PAYMENT—SECTION 30.23, FLORIDA STATUTES APPLICABLE

QUESTION: Where the deputy sheriff of Monroe County on an order of the prosecuting officer investigates a motor vehicle accident outside the limits of Key West in which no personal injury is involved although the damage to the vehicles exceeds \$50.00, is said deputy entitled to the statutory fee of \$6.00 for said investigation?

To: Honorable Berlin A. Sawyer, Sheriff, Monroe County, Key West, Florida:

..... Your question is therefore answered in the affirmative.

March 30, 1950.—050-157.

SHERIFFS—PROPERTY—WRITS—PROCESS—EXECUTION—LEVY
—SECTION 30.30, F. S. '41 APPLICABLE

QUESTION: Where the sheriff is ordered by the attorney for the plaintiff to levy upon certain real property and upon investigation sheriff finds that title to said real property has been transferred to a third party several months prior to the order of levy, may the sheriff proceed with said levy against said property?

To: Honorable Edward Porter, Jr., Sheriff, Marion County, Ocala, Florida:

In Chapter 22019, Laws of Florida 1943, an act prescribing the rights, duties and liabilities of sheriffs in levying writs, authorizing them to require bonds in certain cases, and providing the procedure to determine whether property is subject to the writ and the effect of such determination in Sections 3 and 5, provides as follows:

.....

The facts as set out in your letter fail to reveal certain relevant factors, as for example, whether or not said third party presently holding title to the said property was made a party to the suit in question, whether said third party is a bona fide purchaser for value, whether the said property had been transferred after commencement of suit and other questions. Therefore in view of the foregoing and in similar situations, where a reasonable doubt may exist as to the sheriff's rights, duties and liabilities in levying writs, it is my opinion that the sheriff should invoke the jurisdiction of the court as prescribed in the above statute to determine whether property in question is subject to execution.

April 20, 1950.—050-211; See Opinion 049-441.

CRIME INVESTIGATIONS—COMPENSATION—SECTION 30.23,
FLORIDA STATUTES APPLICABLE

QUESTIONS: 1. Is the sheriff entitled to compensation for investigation of crime as allowed by Section 30.23, Florida Statutes, when made under direction of a person other than those public officers designated in said statute?

2. Where the sheriff makes an investigation of crime of his own volition, is he entitled to compensation as prescribed in the above statute?

3. Must the sheriff receive such directions prior to making said investigation in order to be entitled to fees provided in the above statute?

4. Does the question of whether an information or indictment is filed have any bearing upon a sheriff's claim for fee in an investigation of a crime?

5. Is the sheriff entitled to such compensation for an authorized investigation of crime prior to the filing of a written report with respect to such investigation?

To: *Honorable Thompson H. Getzen, County Solicitor, Dade City, Florida:*

.....

(1) and (2). Under the wording of the above quoted portion of Section 30.23 and on the basis of the reasoning and determinations set forth in aforesaid opinion 049-441, both these questions are answered in the negative.

(3) It appears that under the provisions of the above quoted part of Section 30.23 and in harmony with the reasoning and conclusions reached in aforesaid opinion No. 049-441, the sheriff is entitled to lawful fees for making such an investigation as here dealt with only if same is made in pursuance of the *prior direction* of the described judge or prosecuting attorney as set forth in Section 30.23.

(4) The matter of whether or not an indictment or information has been filed has no bearing upon the right of the sheriff to lawful fees for an investigation made in pursuance of the above quoted portion of Section 30.23. Hence, this question is answered in the negative.

(5) There appears to be no provision of law requiring the sheriff to file a written report of his findings in pursuance of such an investigation as a prerequisite to receiving the fees payable for his services in connection therewith as provided by law. Whether or not a bona fide investigation such as to entitle the sheriff to fees has been made would no doubt be taken into consideration by the court which is required to approve the sheriff's fees for such an investigation.

May 1, 1950.—050-222.

ALCOHOLIC BEVERAGES—WINES AND LIQUORS—SHERIFF'S
SALES TO WHOLESALERS, RETAILERS, NONLICENSED
CITIZENS

QUESTION: Are sheriff's sales of legal alcoholic beverages including wines and liquors held in the same manner as sheriff's sales of other property?

To: *Honorable Bill Towles, Sheriff, Taylor County, Perry, Florida:*

As to whether Federal statutes prohibit such sales to the average nonlicensed citizens reference is made to Title 26, Section 3251 of the United States Code Annotated entitled "Casual Sales." Paragraph A entitled, "By Creditors, Fiduciaries, and Officers of Court." This section states substantially that no such tax shall be held to accrue on the sale of distilled spirits, wines or malt liquors made by a person who is not otherwise a dealer in such spirits received by the person so selling under order or process of any state or magistrate. The only such restrictions on the sale of such spirits by such person is that the parcel must be no less than 20 wine gallons, this restriction on sales at public auctions is the only one which the Federal Government places on such a sale.

State statutes provide such sales may be made to three classes of persons: (1) wholesalers (2) retailers (3) nonlicensed citizens. It would be proper to notify the above classes of likely purchasers that as to the persons of the first class that he may wholesale it, the retailer may only retail the property and the nonlicensed citizen may not purchase same for resale.

In view of the foregoing it is my opinion your question should be answered in the affirmative subject to above remarks.

June 26, 1950.—050-315.

**SHERIFF—JAILS—ASSAULT BY FELLOW PRISONER IN JAIL—
PRISONERS—PERSONAL INJURIES—LIABILITY—COUNTY
EXEMPT FROM**

QUESTION: Is either the county or the sheriff liable for damages to a prisoner in the county jail when such prisoner suffers personal injuries resulting from an assault by another prisoner?

To: Honorable W. Kenneth Barnes, Judge, Court of Record, Pasco County, Dade City, Florida:

. . . . in so far as your question relates to the legal liability of the county, which might be enforceable through court action, the question is answered in the negative.

However, with regard to the liability of the sheriff, a different situation arises. . . .

Accordingly, your question is answered thusly: When a prisoner confined in the county jail suffers injury at the hands of another prisoner, the county is not liable for damages in the absence of a specific statute creating such liability; however, if the sheriff, as a jailer, fails to exercise reasonable care to prevent such injury, he may be liable for the damages proximately caused, depending on the facts in the case.

July 7, 1950.—050-329.

**CONSTABLES—PRISONERS—RELEASE FEES—SHERIFFS—
MILEAGE—SECTION 30.24, FLORIDA STATUTES**

QUESTION: (1) Who, as between the constable of a Justice of the Peace District and the sheriff of the county, is entitled to the release fee for the release of a prisoner, when the prisoner is in the custody of the constable but is lodged in the county jail for safe keeping, and is subsequently released after pleading guilty to the crime charged before the Justice of the Peace and paying the fine assessed?

(2) Is the sheriff of a county entitled to reimbursement for gasoline and oil for his automobile, in addition to mileage fees, when transporting a prisoner from without the county, or state, back to the county having jurisdiction over the prisoner?

To: Honorable W. S. Weaver, Clerk Circuit Court, Bay County, Panama City, Florida:

The answer to your first question may be found in several prior opinions of this office. On July 21, 1934, the then Attorney General ruled on a similar question as follows: "when a constable brings a prisoner to a jail for receipt and safekeeping, and when, under order of court, a constable returns to the jail to secure the release of the prisoner, the constable and not the sheriff would be entitled to the commitment or the release fee, as the case may be." (See 1933-1934 Biennial Report 266)

Another of my predecessors rules in an opinion rendered April 24, 1939 (see 1939-1940 Biennial Report 66) as follows: "the officer,

whether sheriff or constable having technical custody of a prisoner or custody in law, is entitled to such fee as is lawfully payable upon his release. Technical or lawful custody should be distinguished from physical custody and depends upon which officer holds and serves a commitment order or similar process. The sheriff as a jailor may have physical custody but the custody in law may be by a constable or other officer."

It would appear then, in the instant case, that if the constable had technical or lawful custody of the prisoner, he would be entitled to the release fee, as opposed to the sheriff of the county who, as jailor, merely had physical custody of the prisoner lodged in the jail for safekeeping pending disposition of the case. Your first question is answered accordingly.

.....

Therefore, it would seem that while the sheriff is entitled to reimbursement for gasoline and oil actually used in returning a prisoner from outside the state, in addition to his mileage, he is not entitled to gasoline and oil expenses for returning a prisoner from outside the county but within the state. Your second question is answered accordingly.

July 19, 1950.—050-342.

CONSTABLES—CRIMES—INVESTIGATIONS—FEES—APPROVAL—
SECTION 30.23, FLORIDA STATUTES

QUESTIONS: 1. If the prosecuting attorney of the county judge's court authorizes a constable to investigate the commission of a crime, but the county judge fails to approve payment of the statutory fee for said investigation of crime after the investigation is made, is the Board of County Commissioners authorized to pay said fee?

2. If the answer to the above is in the negative, what procedure should a constable follow to be assured that he is properly authorized so that he will receive the statutory fee for future investigations?

To: *Honorable Marion H. Grice, County Commissioner, Avon Park, Florida:*

.....

Therefore, the answer to your first question is in the negative.

As to your second question, the statute makes no provision for obtaining prior approval from the court when making an investigation of crime at the direction of the state's attorney, county solicitor or other prosecuting officer. However, as a practical matter, it would appear that if the constable entertains any doubt as to whether or not approval would be forthcoming for any investigation of crime made by him under the direction of any of the above officers, then said constable may first seek an approval from the court having criminal jurisdiction of the matter before proceeding to investigate. This procedure should avoid any differences after an investigation has been made, as an investigation performed at the direction of the court having criminal jurisdiction does not require subsequent approval from the court for the court's own order.

September 29, 1950.—050-470; 050-381.

**SHERIFFS—DEPUTY AS COUNTY TRAFFIC OFFICER—MAY
SERVE CIVIL PROCESS—SECTIONS 30.07, 47.12, FLORIDA
STATUTES**

QUESTIONS: 1. Does a duly appointed deputy sheriff who is also employed by the county as a traffic officer, have the authority to serve a civil process while acting in his capacity as a deputy sheriff?

2. Is the sheriff entitled to charge the county the usual fees for such service?

To: *Honorable Rex Sweat, Sheriff, Duval County, Jacksonville, Florida:*

.....

Therefore, the answer to your first question is answered in the affirmative.

As to your second question, it is my opinion that the sheriff is entitled to charge the county the usual fees for such service.

December 1, 1950.—050-541, 045-314, 046-72

**SHERIFFS—ARREST FEES PAID OTHER PEACE OFFICERS
BY—COUNTY NOT LIABLE FOR—\$30.23, \$37.20,
FLORIDA STATUTES**

QUESTIONS: 1. Where municipal police officer makes an arrest and turns over the prisoner to sheriff for prosecution by county, is sheriff authorized to pay the arrest fee to said police officer and charge same to the county?

2. Where the arrest, as above, is made by a constable, is the sheriff authorized to pay said constable the arrest fee?

To: *Honorable A. Hagan Parrish, Sheriff, Polk County, Bartow, Florida:*

Opinion 045-314 above, poses the question of whether the sheriff may properly pay cost charges made by the municipal police department for prisoners turned over to the sheriff for prosecution in the county and whether said sheriff is entitled to be reimbursed for said costs paid by sheriff to police department. It was therein held that in the absence of any special act to the contrary, the sheriff has no authority to pay said costs and charge the county for same.

Opinion 046-72, referred to above, poses the question of whether the sheriff of a county may pay other peace officers for making arrests and charge this as an expense of the office. It was therein held that the county is responsible for only one arrest fee for the same arrest and that the sheriff is entitled to said arrest fee; however, if the sheriff desires to give said fee to another peace officer, he may do so but he cannot charge the county for more than one arrest fee for the same arrest. In other words, the county can only be billed once for an arrest fee for the same arrest and the sheriff may do this by billing the county for the said fee in his name. I concur in the conclusion reached in opinions referred to.

In view of the foregoing, it is my opinion that a county is responsible for only one fee for the same arrest paid directly to the sheriff.

By statute the sheriff is entitled to a fee for arrest; however, if the sheriff desires to give said fee to the municipal police officer who made the arrest, I see no legal reason why he cannot do so but the sheriff may not charge the county a second fee for the same arrest.

As to your second question, Section 37.20, Florida Statutes, provides that the fees of constable shall be as provided in Section 30.23, Florida Statutes. Section 30.23 above prescribes a schedule for said fees which includes a fee for arrest of prisoner. As pointed out above, the county is responsible for only one fee for the same arrest.

Therefore, it is my opinion that if the constable makes the arrest in question, said constable is the only one entitled to receive said fee for arrest and the sheriff may not bill the county for fee for the same arrest.

CRIMINAL COURT OF RECORD

June 23, 1949.—049-269.

CLERK—CRIMINAL COURT OF RECORD—COUNTY COURT—FEES
—BROWARD COUNTY—§ 32.12(1), CH. 23,168 ACTS OF 1945
AND 25,169 ACTS OF 1949

QUESTIONS: 1. Is the Clerk of the Criminal Court of Record of Broward County, established by Chapter 25066, Acts of 1949, entitled by virtue of Chapter 32.12, Florida Statutes 1941, to charge the fees fixed for the Clerk of the Circuit Court of Broward County by Chapter 25169, Acts of 1949?

2. Is the Clerk of the Criminal Court of Record of Broward County, who is ex officio Clerk of the County Court of said county, entitled to charge the \$10.00 flat filing fee provided for the Clerk of the County Court of said county in civil cases by Chapter 23168, Acts of 1949?

To: *Honorable W. E. Bunch, Jr., Clerk Criminal Court of Record, Fort Lauderdale, Broward County, Florida:*

1. . . . since Chapter 25066 makes no specific provision for fees for the Clerk of said Court, the governing provision is Section 32.12(1), Florida Statutes Annotated Chapter 25169 does not govern the fees of the Clerk of the Criminal Court of Record of that county. . . .

2. . . . Chapter 23168, Acts of 1945, is a local Act fixing the fees of the Clerk of the County Court of Broward County for services in civil cases; and Chapter 25168, Acts of 1949, which is another local Act, contains the same provision for fees for said clerk's services in civil cases. . . . So far as fees are concerned, it is immaterial that, under Section 34.03, Florida Statutes 1941, the Clerk of said Criminal Court of Record is also the Clerk of the County Court, because his compensation as Clerk of the Criminal Court of Record is fixed by different statutes from those which fix his compensation as Clerk of the County Court.

July 19, 1949.—049-327.

CLERK, COURT OF RECORD—COMPENSATION—CHAPTER 25159,
ACTS 1949 APPLICABLE TO ESCAMBIA COUNTY

QUESTION: As to whether the office of the Clerk of the Court of Record of Escambia County comes under the provisions of Chapter 25159, Acts of 1949, Laws of Florida?

To: *Honorable George Trawick, Clerk Court of Record, Pensacola, Escambia County, Florida:*

..... the answer to your inquiry is in the affirmative.

July 26, 1949.—049-341.

COUNTY SOLICITORS—ASSISTANT COUNTY SOLICITORS—
POWERS AND DUTIES—§§27.21, 27.22, 32.20, 32.25, F. S.—
A3 §27, A5 §27, 28 FLA. CONST.

QUESTIONS: 1. Can an Assistant County Solicitor administer an oath to witnesses who are subpoenaed to appear before the County Solicitor?

2. Can the County Solicitor use the testimony of such witnesses as a basis for filing an information?

3. If such witnesses duly and regularly subpoenaed to appear before the County Solicitor are sworn to tell the truth by an Assistant County Solicitor and commit perjury, would a prosecution lie for such perjury?

4. Can an Assistant County Solicitor legally subpoena witnesses to appear before such Assistant County Solicitor and put the witnesses under oath to take their testimony?

5. Can such testimony as outlined above be a basis for the County Solicitor to file an information?

To: *Honorable Robert R. Taylor, County Solicitor, Miami, Florida:*

.....

..... the proper answer to your questions 1, 2 and 3 is "Yes."

..... in *Segars v. State*, 115 So. 537, the Supreme Court said, with reference to Assistant County Solicitors, that "If they in fact are substantive and independent officers, clothed with all the powers of the county solicitor and thus vested with a portion of the sovereign authority of the state, which they may exercise in their own name and at their own discretion, the statute would then have had to provide that they should be appointed by the Governor, instead of by the county solicitor, or elected by the people, as required by Section 27 of Article 3 of the Constitution." Therefore, in order to be on the safe side, I would suggest that you follow the pattern of *State ex rel. Cooper v. Coleman*, 189 So. 691, (where the State Attorney had the witness subpoena issued, returnable before him, and the Assistant State Attorney administered the oath and examined the witness when he appeared at the State Attorney's office in answer to the subpoena).

.....

Subject to the foregoing qualifications, your questions 4 and 5 are answered in the affirmative.

CIVIL COURT OF RECORD

February 14, 1949.—049-56.

PASCO COUNTY STATUTORY COURT OF RECORD, JUDGE OF—
ATTORNEY FOR COUNTY COMMISSIONERS

QUESTION: May the Judge of the Court of Record of Pasco County, Florida, also serve as attorney for the board of county commissioners, simultaneously and in the same county?

To: *Honorable J. E. Rhodes, County Commissioner, Pasco County, Dade City, Florida.*

.....

The question from a strictly legal viewpoint, and without consideration of the wisdom or merits of such policy must be answered in the affirmative.

COUNTY COURTS

January 18, 1949.—049-13.

MADISON COUNTY—PROSECUTING ATTORNEY—SALARY—FEES—ETC., CHAPTER 21363, ACTS OF 1941

QUESTION: What compensation, i.e., salary, conviction fees, etc., is the Prosecuting Attorney for the County Court of Madison County, Florida entitled to receive?

To: *Honorable Dale M. Leslie, Clerk of the Circuit Court, Madison, Madison County, Florida:*

In reply thereto, I beg leave to state for your information and that of the Board of County Commissioners of Madison County, the compensation, i.e., salary, conviction fees, etc., for the Prosecuting Attorney for the County Court of Madison County, Florida, should be as prescribed in Chapter 21363, Acts of 1941, which is a flat salary of \$100.00 per month.

May 18, 1950.—050-247.

COUNTY COURTS—CLERK—FLAT FEE LAW—EFFECT UPON
DOCKET FEE OF JUDGE—ARTICLE V, SECTION 18, CON-
STITUTION—SECTION 34.20, FLORIDA STATUTES

QUESTION: Where a statute, establishing or otherwise relating to a county court, provides in part that the judge of the county court shall receive a fixed compensation "and a fee of two dollars for each case docketed in said court to be taxed and paid as other costs," and a subsequent statute is enacted providing that "the fees of the clerk of said court, for all services to be performed by him therein, in lieu of all other fees heretofore charged" shall be a flat fee, what is the effect of the subsequent statute upon the docket fee provided for the judge under the first statute?

To: *Honorable C. M. Gay, State Comptroller:*

.....

The only reasonable conclusion to be drawn from the statutes involved is that the clerk was to have a fixed fee in lieu of fees based upon the items of work to be done by him, and that there is no indication or an intention to change the fees of the sheriff and judge. There is no indication that the fees of either the judge or the sheriff are included in the fees fixed for the clerk of the court. The answer to the above question should be that the flat fee statute in no way affected the compensation paid to the judge as a docket fee.

Although this construction would seem to make the costs in the county court two dollars per case (the same being the docket fee of the

judge) more than proceedings in the circuit court, we feel that the language of the statute is clear and that this defect, if the same is to be termed a defect, must be left up to the action of the Legislature for correction.

January 14, 1949.—049-11.

COUNTY COURT—CRIMINAL COURT OF RECORD—PALM BEACH
COUNTY—CH. 20,790 LAWS OF 1941, CH. 24,055 LAWS OF 1947,
APPLICABLE

QUESTION: What statutes apply to and control the operation of the offices of clerk of the criminal court of Palm Beach County, Florida, and the office of the clerk of the county court of Palm Beach County, Florida?

To: *Mr. J. Louie Carter, Clerk, Criminal and County Courts, Palm Beach County, West Palm Beach, Florida:*

. chapter 24055, laws of 1947, is the statute applicable to the office of the clerk of the criminal court of record in and for Palm Beach County, Florida, and that chapter 20790, laws of 1941, is the statute applicable to the county court of Palm Beach County, Florida.

December 21, 1950—050-575.

COUNTY JUDGE'S COURTS—PROSECUTING ATTORNEY'S
FEES—CONVICTION REQUIRED—SECTIONS 34.11,
125.03, 939.06, FLORIDA STATUTES

QUESTIONS: "1. In view of Section 14 of the Declaration of Rights in the Florida Constitution can the costs in a Criminal Action be legally assessed against a Defendant without such Defendant having been adjudged Guilty either on a Plea of Guilty or a Plea of Nolo Contendere or a verdict of a Jury?

"2. Is the Prosecuting Attorney in the County Judge's Court entitled to the conviction fee allowed by Sections 125.04 and 34.11 when the case is dismissed on payment of costs in the absence of any Jury Verdict or Adjudication of Guilt by the County Judge?"

To: *Honorable Otis Whitehurst, Prosecuting Attorney, Highlands County, Sebring, Florida:*

.

. your first question is answered in the negative

. a conviction is a condition precedent to the collection of a fee by the prosecuting attorney.

COUNTY JUDGE'S COURTS

January 18, 1949.—049-15.

STATUTE OF LIMITATIONS—CRIME PROSECUTION

QUESTION: Does the two year statute of limitations apply even though a warrant has been issued?

To: *Honorable Monroe W. Treiman, County Judge, Hernando County, Brooksville, Florida:*

.....
If there has been an indictment or information filed within the two years, the two year statute of limitations does not apply.

If the prosecution was based merely upon an affidavit before a committing magistrate and warrant issued within two years from the date of the crime, the fact that two years has passed since the issuance of the warrant would not of itself constitute an abandonment of the prosecution, so as to prevent the future filing of an information or the finding of an indictment, provided the further prosecution was based upon the affidavit and warrant.

.....
January 19, 1949.—049-18.

COUNTY JUDGE—FEES, ETC., REPORT OF—SECTION 18,
ARTICLE 5, FLA. CONST.—SAINT LUCIE COUNTY

QUESTION: Should a County Judge who is also Juvenile Judge and Judge of the County Court, report in his report of compensation the salaries received in addition to the fees and commissions collected?

To: *Honorable Flem C. Dame, County Judge, Saint Lucie County, Fort Pierce, Florida:*

Section 18 of Article 5 of the Constitution of Florida, providing for the creation of County Courts contains the following language: "The County Judge shall be the Judge of said Court." It is by reason of that provision that the County Judge is Judge of the County Court, and it is my opinion that the language "or other remuneration" of the County Judge includes salary as Judge of the County Court and of the Juvenile Court, and should be reported as such.

February 3, 1949.—049-44.

JUSTICE OF PEACE—NO COMPENSATION FOR PRELIMINARY
HEARING

QUESTION: What is the fee allowable for holding a preliminary hearing?

To: *Honorable W. L. Long, Justice of Peace, Sebring, Florida:*

I do not find in the law any authorization of a charge of \$5.00 for this purpose.

In a former opinion, it was stated that the statute, Section 36.18 was applicable only to county judges, and that there was no other provision of law making it applicable to the justice of the peace.

In addition to the foregoing, it appears that the language for the county judge applies only to counties having a population of more than 175,000 according to the last federal census.

February 23, 1949.—049-66

ELISOR—APPOINTMENT—COUNTY LIABLE FOR PAYMENT
OF SERVICES

QUESTION: "May the Board of County Commissioners of Volusia County pay for the services of an elisor who has served a search warrant under an order appointing such elisor by a county judge?"

To: *Honorable Jess Mathas, Clerk of Circuit Court, Volusia County, DeLand, Florida:*

.....

..... there is an implied authority to compensate an elisor for his services in the same amount that a sheriff or constable would otherwise receive since the elisor is in effect serving as a substitute for such officer. This assumes a proper appointment in compliance with the statute.

March 2, 1949—049-81

**CRIMINAL PROCEDURE—CHARGE CHANGED—NEW AFFIDAVIT
REQUIRED—MARRIAGE LICENSE—DUPLICATE ISSUED
WITH ORIGINAL EXPIRATION DATE—§741.05(8)**

QUESTIONS: 1. What is the procedure for reducing criminal charge on man in County Judge's Court. Example: on preliminary hearing man pleads not guilty to charge of reckless driving. I believe that reckless driving charge would be hard to prove, but that he is guilty of improper left hand turn. Must new affidavit and case be filed, or can the existing affidavit be changed?

2. Is it legal to issue duplicates of marriage licenses alleged to have been lost or destroyed?

To: *Honorable Monroe W. Treiman, County Judge, Brooksville, Florida:*

.....

It is my opinion that the proper way to change the charge from reckless driving to making an improper left hand turn is to make a new affidavit and case, rather than to change the reckless driving affidavit.

When.....it is made to appear to the issuing County Judge that such license has been lost or destroyed, I think it would be only right and proper for the County Judge to issue a duplicate license at any time within said thirty days, without requiring the parties to go through the same preliminary procedure again.

.....

March 28, 1949—049-127.

**COUNTY JUDGES—ASSIGNMENT EXPIRATION—GOVERNOR'S
AUTHORITY TO MAKE FURTHER ASSIGNMENTS**

QUESTION: Does the Governor after the expiration of an assignment of a county judge which has expired after thirty days, have authority to make another assignment for the same length of time?

To: *Honorable Fuller Warren, Governor, Tallahassee, Florida:*

It is my opinion that Section 36.07, Florida Statutes Annotated contains the applicable law and it provides that: "If the resident county judge be unable to resume his duties at the end of thirty days from the date of the executive order, other and further assignments may be made."

April 16, 1949—049-161

COUNTY JUDGE'S ASSISTANT CLERK—NO AUTHORITY TO SIGN
NON-JUDICIAL PAPERS—§36.04 F.S.

QUESTION: Am I, as County Judge, authorized to permit my assistant clerk to sign non-judicial papers in the absence of my regularly appointed clerk?

To: *Honorable Vassar B. Carlton, County Judge, Brevard County, Titusville, Florida:*

It is my opinion that an assistant clerk could not be lawfully authorized to sign such papers.....

June 13, 1949—049-248

FISHING LICENSES—HILLSBOROUGH COUNTY—SENATE BILL
356—COLLECTION OF EXTRA DOLLAR—CH. 25,880
LAWS OF 1949

QUESTION: Under Senate Bill 356 of the 1949 legislature, directing the County Judge of Hillsborough County to collect an additional dollar on each fresh water fishing license for a period of three years beginning July 1, 1949, and which act has the further specific provision that it shall take effect July 1, 1949, may the county judge collect said additional dollar on licenses effective on and after July 1, 1949, but issued by him prior to such date?

To: *Honorable William C. Brooker, County Judge, Hillsborough County, Tampa, Florida:*

.....

In my opinion the above question properly is answered as follows:

While such licenses are effective only from July 1, 1949, I see no objection to your allowing persons applying for these licenses to pay the additional \$1.00 prior to July 1, 1949, if they so desire. This will facilitate the issuance of these licenses and provide uniformity of issuance procedure and is but an administrative detail.

June 21, 1949—049-266

ADDITIONAL COUNTY JUDGE BY LEGISLATIVE ACT—CONSTITUTIONALITY—DADE COUNTY— CHAPTER
25477 ACTS OF 1949

QUESTION: Is Chapter 25477, Laws of Florida, Acts of 1949, providing for an additional county judge in counties of the state having a population of 300,000 or more inhabitants according to the latest federal or state census, a valid law in view of the provisions of Article V, Section 16, Florida Constitution?

To: *Honorable Fuller Warren:*

.....

Serious doubt exists concerning the constitutionality of the above act in the light of the provisions of said Article V, Section 16. However, no opinion of this office could settle the question with finality. If the law is valid, as stated above, a duty will rest upon the Governor when it becomes effective to fill this office by appointment. It is

recommended that the Governor obtain an opinion from the Supreme Court, as contemplated by Article IV, Section 13, Florida Constitution, concerning his executive duty to make such appointment, in view of the above quoted provisions of Article V, Section 16, of our constitution.....

July 7, 1949—049-306

JUDICIAL OFFICERS—CONSERVATORS OF PEACE—AUTHORITY
—ARRESTS—NO COMPENSATION ALLOWED

QUESTION: Do county judges of this state have the power of arrest for misdemeanors committed in their presence, where the delay occasioned by securing the sheriff or a constable would permit the offender to escape?

To: *Honorable Monroe W. Treiman, County Judge, Brooksville, Florida:*

.....
..... I am of the opinion that a justice of the peace, county judge or any other judicial officer of this state may arrest persons who in their presence commit a *misdemeanor which tends to a breach of the peace*. This is a conditional answer of the above question in the affirmative. We might add by way of information that there appears to be no statute providing a fee for the making of such arrests by judicial officers.

July 8, 1949—049-308

MARRIAGE LICENSES—ISSUANCE BY COURT CLERK—
WHEN LEGAL

QUESTION: Is it legal for the authorized clerk of the county judge's court to issue a marriage license in the absence of the county judge?

To: *Honorable Hiram W. Bryant, County Judge, Ft. Myers, Florida:*

.....
It is my opinion that when the conditions precedent as set out by the statutes have been met, a marriage license can be issued by the authorized clerk of the county judge in all cases except where a male under the age of 18 years and a female under the age of 16 years have acknowledged under oath that they are parents or expected parents of a child, and in this event the license must be issued by the county judge.

This opinion follows those of one of my predecessors, Honorable Fred H. Davis, as appears in Biennial Report 1929-1930, at pages 327 and 330, and any other opinions heretofore rendered by this office which are contrary hereto are hereby disapproved.

August 15, 1949—049-381

FEES—ENTITLEMENT UPON ADJUDICATION OF GUILT OR
INNOCENCE—CHAPTER 25070, ACTS 1949, §36.19

QUESTION: Under Chapter 25070, Laws of Florida, Acts of 1949, what constitutes a final judgment order entitling the county judge to his fee?

To: *Honorable Howard G. Livingston, County Judge, Sebring, Florida:*

.....

When a complaint is filed, a warrant written out by the county judge, but not placed in the hands of the sheriff for service, the county judge is not entitled to any fees, even though he might later enter an order dismissing the case; but when the warrant is issued and placed in the hands of the sheriff for service and the case is later terminated, either upon adjudication of guilt or innocence, or formal disposition by motion of nolle prosequi, dismissal or discontinuance, the county judge is entitled to receive his \$7.50 fee, these having been interpreted as final judgment orders.

This seems to be a reasonable construction of the statute and in my opinion is a correct construction and answers the above question. Therefore, my opinion, No. 049-282, heretofore issued on this subject is hereby modified accordingly.

September 1, 1949—049-420

COUNTY JUDGES—ENTITLED FEES—PROCEEDINGS FOR ENFORCEMENT OF CHAPTER 25241, ACTS 1949—§36.17, F.S.

QUESTION: Are county judges entitled to any fees in connection with the proceedings before them for the enforcement of Chapter 25241, Laws of Florida, Acts of 1949, and the issuance of orders of commitment in connection therewith?

To: *Honorable J. M. Hearn, County Judge, Live Oak, Florida:*

.....

..... I am of the opinion that Section 36.17, Florida Statutes, is applicable, and that the above question should be answered in the affirmative.

September 10, 1949—049-428

OFFICE EXPENSES—SALE OF FISHING LICENSES BY OUT OF STATE AGENT—THEFT OF PROCEEDS—LEGAL FEES FOR RECOVERY NOT ALLOWED

QUESTION: May a county judge charge as an expense of his office legal fees for the employment of counsel in the prosecution of an out-of-state agent of said county judge who was employed to sell fishing licenses and who absconded with certain funds collected by said agent in August, 1948?

To: *Honorable Sam D. May, County Judge, Washington County, Chipley, Florida:*

.....

The question therefore is answered in the negative.

February 24, 1950—050-97

**COUNTY JUDGE'S FEES—POWERS AND DUTIES—
SEC. 36.19-36.21 F.S. '41**

QUESTIONS: 1. Do the provisions of Chapter 25070, Laws of Florida, Acts of 1949, apply to and govern fees of county judges in preliminary examinations as well as in cases where the county judges have original criminal trial jurisdiction?

2. Were the provisions of Sections 142.09 and 939.14, Florida Statutes, repealed or in any way affected by the enactment of Chapter 25070, Laws of Florida, Acts of 1949?

3. May a county judge dismiss criminal charges, in which he is acting as a committing magistrate, against an accused, without holding a preliminary examination, in the absence of the consent of the prosecuting attorney of the proper trial court?

4. If the last above question is answered in the affirmative, is the county judge entitled to his fee under such circumstances?

5. Where, after arrest but before preliminary examination, the accused is admitted to bail but fails to appear for preliminary hearing and the bond is estreated and judgment entered thereon, is the committing magistrate before whom the charges were preferred entitled to his fees?

To: *Honorable Boyd H. Anderson, President, County Judges' Association, Fort Lauderdale, Florida:*

.....

1. The provisions of Chapter 25070, Laws of Florida, Acts of 1949, apply to and govern the fees of county judges in preliminary hearings, as well as in cases where the county judge has original trial jurisdiction. Both preliminary hearings and original trials are criminal actions or proceedings. The order of the county judge in preliminary examinations either discharging the accused, dismissing the proceeding or holding the accused for trial in the proper court is a final judgment order within the purview of the statute.

2. The provisions of Sections 142.09 and 939.14, Florida Statutes, not being in conflict with said Chapter 25070 were not repealed by it, and are therefore still applicable, so that when the accused is held for trial in any of the courts within the purview of said sections the county judge's fee under said Chapter 25070 may not be paid if no indictment or information is returned or filed in the said trial court.

3. In proper cases and under proper circumstances county judges may discharge an accused without actually holding a preliminary hearing in the case, in which case the order of discharge would be within the said Chapter 25070 where it finally disposed of the proceeding in so far as the county judge's court is concerned. Care should be exercised in these cases so that no person would be so discharged that should not be.

4. The third question being answered in the affirmative, under the conditions above stated, the county judge would be entitled to his fees under said Chapter 25070.

5. Where a bail bond for appearance in the county judge's court is estreated and judgment entered thereon, the county judge would not be entitled to his fees unless and until the proceeding in his court is also finally disposed of in some proper manner. The proceeding on the bail bond is not a final disposition of the proceeding before the county judge.

Any prior opinions of this office in conflict with, or partly in conflict with this opinion are hereby overruled to the extent of the conflict.

March 2, 1950—050-103

JUVENILE JUDGE—VACANCY IN OFFICE—COUNTY JUDGE—
AUTHORITY TO ACT AS

QUESTION: In case of vacancy created in the Juvenile Court due to the death of the Juvenile Judge, may the County Judge dispose of cases on the docket of the Juvenile Court until such time as a Juvenile Judge has been appointed?

To: *Honorable Raymond R. Lord, County Judge, Key West, Florida:*

.....

In my opinion this statute clearly sets forth that as County Judge of Monroe County you have authority to act as Juvenile Judge of said county under the circumstances you set forth in your inquiry.

September 29, 1950—050-473

CONSTABLES—MAY SERVE PROCESS OF COUNTY JUDGES—
JUDICIAL INQUIRIES OF INSANE— SECTION
37.18, FLORIDA STATUTES

QUESTION: May a constable serve process of a county judge in judicial inquiries of the insane?

To: *Honorable D. H. Sloan, Jr., Clerk, Circuit Court, Polk County, Bartow, Florida:*

.....

In view of the foregoing, it is my opinion that a constable may serve a process of a county judge in judicial inquiries of the insane. Therefore, your question is answered in the affirmative.

December 11, 1950—050-553.

COUNTY JUDGE AND PROSECUTING ATTORNEY—JURISDICTION
—VACATING SENTENCE—LESSER SENTENCE IN
CRIMINAL CASES

QUESTIONS: 1. Where a defendant in a criminal case in the County Judge's Court has pled guilty and has been adjudged guilty and sentenced to pay a fine, and has made a ninety-day bond for the payment of such fine, and such ninety days have elapsed, does the County Judge have jurisdiction to reopen the case, set aside the sentence, and impose a lesser sentence requiring the defendant to pay the costs of prosecution?

2. Under the circumstances mentioned in Question 1, does the County Prosecuting Attorney have the right to reopen the case so that the defendant can be re-sentenced to pay the costs?

To: *Honorable Joe Dan Trotman, County Judge, DeFuniak Springs, Florida:*

AS TO QUESTION 1.

.....

..... if the term of court at which the fine was imposed has not expired, the County Judge has jurisdiction to vacate the sentence and impose a lesser sentence requiring the defendant to pay the costs

of prosecution, but that, if said term has expired, the County Judge has no authority to vacate the sentence to pay a fine and impose a lesser sentence to pay the costs.

In my opinion, the fact that a 90-day bond was given for the fine did not amount to a satisfaction of the sentence and does not stand in the way of vacating the sentence imposing said fine if the term of court at which said sentence was imposed has not expired.

AS TO QUESTION 2.

In my opinion, the County Prosecuting Attorney has no power to reopen the case under the circumstances mentioned in Question 1 so that the defendant may be re-sentenced to pay the costs.

..... However, your letter does not indicate that the County Prosecuting Attorney has done more than make a recommendation to the court, and I think that it is entirely appropriate for him to recommend to the court that a sentence be lessened when, in his opinion, the facts and the law justify such a recommendation.

JUSTICES OF THE PEACE COURTS

March 5, 1949—049-86

JUSTICES OF PEACE JURISDICTION IN PASCO COUNTY— AUTHORITY—COMMITTING MAGISTRATE—NO POWER IN CRIMINAL CASES

QUESTION: What is the criminal jurisdiction of Justice of the Peace in Pasco County?

To: *Honorable David A. Dowling, Justice of the Peace, Pasco County, New Port Richey, Florida:*

.....

As Pasco County is a county of less than 50,000 inhabitants, and has no criminal court of record, you have no trial jurisdiction in criminal cases whatsoever, but only the jurisdiction of a committing magistrate.

March 4, 1949—049-83

FINGER PRINT EXPERT—DUAL OFFICES—COMPENSATION AS WITNESS ALLOWED

QUESTION: May a finger print expert who testifies, be paid as such witness while holding the office of Justice of the Peace?

To: *Honorable Ray Hamlin, Justice of the Peace, Monroe County, Key West, Florida:*

In reply to your inquiry, I beg leave to state that, he may.

March 21, 1949—049-115

OFFICE EXPENSE—MONROE COUNTY—HIGHWAY PATROL- MEN NOT REQUIRED TO FILE CHARGES IN J. P. COURT—\$321.05 F. S.

QUESTIONS: 1. Has the Board of County Commissioners of Monroe County, the duty, or authority to furnish to a Justice of the

Peace office rent, electric lights, or telephones used in the operation of his office?

2. Should the Florida Highway Patrolmen file charges against persons arrested by them in Justice of the Peace Court for a hearing?

To: *Honorable Roy Hamlin, Justice of Peace, Monroe County, Key West, Florida:*

In answer to the first question, I beg leave to state that I am unable to find any statutory authority in the county commissioners of Monroe County to supply office rent, electric lights or telephones to a Justice of the Peace.

In answer to your second question, I beg leave to state that I know of no rule requiring the charges to be made first in the justice court instead of by information. See Section 321.05, Florida Statutes, 1941, as amended.

March 22, 1949—049-116

CONSTABLE AS DEPUTY SHERIFF—NOTARY OR JUSTICE
OF PEACE MAY PERFORM MARRIAGE CEREMONIES

QUESTIONS: 1. Properly may a constable be appointed a deputy sheriff?

2. While holding a constable's commission, may the constable serve papers as a deputy sheriff?

3. What is the criminal jurisdiction of a justice of the peace in Pasco County?

4. May a notary public perform a marriage ceremony?

5. May a justice of the peace perform a marriage ceremony?

To: *Honorable J. Gregg O'Berry, Justice of the Peace, Pasco County, Lacoochee, Florida:*

The above questions are answered in their numbered order as follows:

(1) this question is answered in the negative.

(2) this question is answered in the negative.

(3) It appears that a justice of the peace has no jurisdiction in criminal cases in Pasco County other than that of a committing magistrate (see Section 37.01, Florida Statutes, 1941) Grave doubt exists that Section 19 of Chapter 22837 would, under any circumstances, make Section 37.24 applicable in Pasco County; and since I cannot settle this question with any finality, in the absence of clarifying legislation or an adjudication of the question by a court of competent jurisdiction, ordinary caution dictates the position that Section 37.24 shall not be construed as applicable in said county.

(4) A notary public may perform a marriage ceremony. (See Section 741.07, Florida Statutes, 1941)

(5) A justice of the peace may perform a marriage ceremony. (See Section 741.07, Florida Statutes, 1941)

April 13, 1949—049-154

NO CRIMINAL JURISDICTION IN COUNTIES HAVING COUNTY COURT AND CRIMINAL COURT OF RECORD

QUESTION: Does a Justice of Peace in any county of the State, having a population of over fifty thousand, and a County Court, have jurisdiction to try misdemeanors, as provided for in subsection (3) of Section 37.01, Florida Statutes Annotated, regardless of whether there is a Criminal Court of Record in the county where the Justice of Peace presides?

To: *Honorable Joseph G. Spicola, Justice of the Peace, Tampa, Florida:*

.....
Altogether it is my opinion that, while a respectable argument to the contrary could be made, it was the intention of the Legislature to grant no criminal jurisdiction to justices of the peace in counties where there is both a county court and a criminal court of record.

.....
May 3, 1949—049-187

JURISDICTION OF MISDEMEANORS IN CERTAIN CASES—
BROWARD COUNTY

QUESTIONS: Do the following misdemeanors come under the trial jurisdiction of justices of the peace in Broward County, Florida, to wit:

1. Reckless operation of motor vehicles;
2. Public intoxication;
3. Operating motor vehicle without proper lights; and,
4. Threatening life with a deadly weapon.

To: *Honorable E. D. Bailey, Oakland Park, Florida:*

.....
..... As the fine may exceed one hundred dollars justices of the peace in Broward County are without jurisdiction of the charge of reckless operation of motor vehicles.

The penalties for public intoxication being a fine of not more than twenty-five dollars or imprisonment in the county jail for not exceeding three months (Section 856.01, Florida Statutes, 1941) and the penalty for operating a motor vehicle without proper light is a fine not exceeding one hundred dollars or imprisonment not exceeding ten days for the first offense (Sections 317.46, et seq. and 317.70, Florida Statutes, 1941). This being true the justices of the peace in Broward County have trial jurisdiction of such matters. However, where there is a second violation of the motor vehicle lighting laws within the same year the justice of the peace would not have jurisdiction to try the second offense.

Threatening life with a deadly weapon carries a penalty of a fine not exceeding five hundred dollars or imprisonment not exceeding a year (Section 784.04, Florida Statutes, 1941) so that justices of the peace in Broward County have no jurisdiction of such matters.

Should a criminal court of record be established in your county, the above rules will not apply after its establishment.

May 19, 1949—049-224

CONSTABLES—CLAY COUNTY—NO AUTHORITY TO APPOINT
DEPUTY

QUESTION: Is Clay County entitled to a deputy constable?

To: *Honorable James Knowles, Constable, Green Cove Springs, Clay County, Florida:*

..... your question must be answered in the negative.

June 22, 1949—049-267

CONSTABLES—DUVAL COUNTY—NO AUTHORITY TO APPOINT
DEPUTY UNDER GENERAL LAW

QUESTION: May the duly elected and qualified constable of the 3rd Justice of Peace District, Duval County, Florida, lawfully appoint a deputy constable?

To: *Honorable Frank S. Wright, Assistant to the Governor:*

..... the question is answered in the negative.

June 27, 1949—049-275

PEACE WARRANTS—COUNTY JUDGES AUTHORIZED TO ISSUE
IN COUNTIES WHERE JUSTICES OF PEACE ARE
PRESIDING §37.21

QUESTION: "As to whether or not a County Judge is authorized to issue a Peace Warrant in a county in which a Justice of the Peace is presiding and is authorized under Section 37.21, Florida Statutes, to issue warrants?"

To: *Honorable M. A. Pellicer, Justice of Peace, Ninth District, St. Johns County, St. Augustine, Florida:*

..... the question is answered in the affirmative.

June 28, 1949—049-287

JUSTICES OF PEACE—FINE AND COSTS—NO JURISDICTION—
CONSTABLES—DEPUTY—NO AUTHORITY TO
APPOINT—CLAY COUNTY

QUESTIONS: 1. May a justice of the peace collect the fine and cost in any case?

2. Or may a justice of the peace only collect costs?

3. May the constable of any justice district in Clay county, Florida, appoint a deputy?

To: *Honorable James Rushton, Justice of the Peace, Green Cove Springs, Clay County, Florida:*

..... the first question should be answered in the negative in so far as it affects Clay county.

Being a committing magistrate you would be entitled to bill the county for the costs accruing in each case, unless the grand jury or

state attorney fails to file an indictment or information in any case. If no indictment or information is filed you are not entitled to costs. You have no jurisdiction to assess costs against an accused.

I find no authority in the statutes or laws of this state authorizing any constable in Clay county to appoint a deputy.....

July 16, 1949—049-321

NO TRIAL JURISDICTION IN COUNTIES HAVING COUNTY COURT AND UNDER 50,000 POPULATION—GADSDEN COUNTY

QUESTION: Does a Justice of the Peace have any criminal trial jurisdiction in Gadsden County, it being a county of less than 50,000 and having a county court?

To: Honorable William D. Doss, Prosecuting Attorney, Gadsden County, Quincy, Florida:

Counties of less than 50,000 population and having a county court, the Justice of the Peace has no criminal trial jurisdiction.

July 20, 1949—049-329

JUSTICES OF THE PEACE—NO TRIAL JURISDICTION IN COUNTIES HAVING CRIMINAL COURT OF RECORD— COUNTY JUDGES COMMITTING MAGISTRATE

QUESTION: 1. Does a justice of the peace have jurisdiction within a justice of the peace district adjoining his own district in which no justice of the peace has qualified and been elected in a number of years?

2. Under whose jurisdiction does a justice of the peace district within a county come as to criminal and civil matters in which district no justice of the peace has been qualified and elected for a number of years?

To: Honorable John W. Harper, Justice of the Peace, Palm Beach County, West Palm Beach, Florida:

.....

I find no authority which would give you jurisdiction in an adjoining justice of the peace district where no justice of the peace has qualified and been elected to serve in such district, except under the limited circumstances found in §901.23, F.S. (see attached opinion No. 049-47) and therefore, subject to the exception noted.....

..... in a justice of the peace district in which no justice of the peace had qualified and been elected there would be no want of jurisdiction in such a case because it would properly fall within the jurisdiction of the county judge.....

July 26, 1949—049-340

CONSTABLES—APPEARANCE BOND HELD BY ANOTHER CONSTABLE—MILEAGE CHARGE TO OBTAIN NOT AUTHORIZED

QUESTION: Am I entitled to collect mileage for sending to Panama City to obtain an appearance bond which had been posted by a defendant at that place?

To: *Mr. Robert H. Ray, Constable, District 1, Franklin County, Apalachicola, Florida:*

I have carefully examined the statutes and fail to find authority for mileage allowance to you under these particular circumstances and consequently it is my opinion your question must be answered in the negative.

July 28, 1949—049-343

JUDGE OF SMALL CLAIMS COURT POLK COUNTY—COMPENSATION PROVIDED BY §9, CH. 25,137 ACTS OF 1949

QUESTION: How do I obtain my compensation as judge of a small claims court under Chapter 25137, Laws of 1949?

To: *Honorable Glenn Darty, Justice of the Peace, Lake Wales, Polk County, Florida:*

There is no provision in Chapter 25137, Laws of Florida, Acts of 1949, for compensation of a justice of the peace sitting as judge of a small claims court in Polk County, except in section 9 of this act, which provides a fee of \$3.50 in some instances and \$10.00 in others. These fees should be retained by the judge as his compensation, such fees to be accounted for under the provisions of Chapter 145, Florida Statutes Annotated.

.....

August 10, 1949—049-366

CONSTABLE—HOLDING MUNICIPAL OFFICE—ELIGIBLE UNLESS PROHIBITED BY MUNICIPAL CHARTER

QUESTION: Properly may a person hold the office of constable and a municipal office at the same time?

To: *Honorable Joseph A. Varon, City Attorney, Hallandale, Florida:*

A municipal office is not an "office under the government of this State," within the contemplation of Art. XVI, §15, Fla. Const. Unless the charter of a municipality prohibits it, there appears to be no legal impediment to a person holding the office of constable and a municipal office at the same time. Attorney General vs. Connors, 27 Fla. 329, 9 So. 7. So conditioned, the question is answered in the affirmative.

August 15, 1949—049-378

COMMITTING MAGISTRATE TO CERTIFY RECORDS—TRIAL JURISDICTION, NO CERTIFICATION NECESSARY—§37.24 F.S.

QUESTION: Are Justices of the Peace Courts which are located 40 miles or more from the county seat of counties having a criminal court of record, under authority of Section 37.24, Florida Statutes, required to file their disposed of cases in the office of the clerk of the said Criminal Court of Record?

To: *Honorable J. Louie Carter, Clerk Criminal and County Courts, West Palm Beach, Florida:*

.....

Assuming, without deciding, that Section 37.24 is constitutional

(but see *Jackson v. State*, 33 Fla. 620, 15 So. 250), it is my opinion that your question should be answered in the negative.

September 7, 1949—049-425

CONSTABLE—MAYOR OF HALLANDALE, FLORIDA—ELIGIBLE
TO SERVE AS

QUESTION: Is it legal for a constable to also hold the office of mayor of the city of Hallandale?

To: *Mr. Foster H. Ingalis, Hallandale, Florida:*

I enclose herewith Opinion No. 047-247 rendered by my predecessor in office and in which I concur. This opinion, I believe, answers your question fully.

November 1, 1949—049-523

NO TRIAL JURISDICTION IN COUNTIES HAVING COUNTY COURT
AND UNDER 50,000 POPULATION—OSCEOLA COUNTY—
CHAPTER 26342, ACTS 1949

QUESTION: What is the trial jurisdiction of a Justice of the Peace in a county (Osceola) which has a county court?

To: *Honorable Lawrence Rogers, Attorney for Osceola County, Kissimmee, Florida:*

Where there is a county court, a Justice of the Peace has no trial jurisdiction, but only the jurisdiction of a committing magistrate, in counties of less than fifty thousand population according to the last State census. (See Chapter 26342, Laws of Florida, Acts of 1949.) Your county has less than fifty thousand population.

November 28, 1949—049-560

SMALL CLAIMS COURTS—PAYMENT OF JURORS FEES
WHERE JUDGE ORDERS JURY TRIAL—HILLSBOROUGH
COUNTY— §16 OF CH. 25,593 ACTS OF 1949

QUESTION: "Please advise who and in what manner the jurors' fees are paid in the Small Claims Court where the Judge thereof calls for a jury trial at his discretion without the prepayment of costs for such purposes as provided for in this act?"

To: *Honorable Joseph G. Spicola, Justice of the Peace, Hillsborough County, Tampa, Florida:*

.....

I know of no means of recoupment, except that to be found in Section 16 of Chapter 25593, which permits the inclusion of costs in the amount of a judgment and execution.

December 30, 1949—049-615

JURISDICTION IN CRIMINAL CASES—PROCESS, WHERE SERVED?
—SEC. 37.01, F. S.

QUESTIONS: 1. May the process issued by a justice of the peace be served in some county other than that of issue, and, if so served, is such service valid?

2. May a justice of the peace in Alachua county, Florida, try and determine any criminal cases?

To: *Honorable H. G. Bates, Justice of the Peace:*

..... Both parts of the first question should, therefore, be answered in the negative.

..... until some court of competent jurisdiction holds otherwise, we conditionally answer the second question in the affirmative.

March 11, 1950—050-120

CONSTABLES—BEVERAGE LAWS—AUTHORITY TO ENFORCE—
CERTAIN EXCEPTIONS—SECTION 23, ARTICLE V,
CONST.—SEC. 901.15, F.S. '41

QUESTION: Do constables of the State of Florida have power and authority to enforce the beverage statutes and laws of this State?

To: *Honorable T. L. Hackney, Jr., Constable, Tampa, Florida:*

.....
These observations seems to answer the above question in the affirmative, with certain exceptions mentioned.

April 12, 1950—050-192

JUSTICE OF THE PEACE COURTS—NO CRIMINAL JURISDICTION
—FEES FOR—NOT ALLOWED—MADISON COUNTY

QUESTIONS: 1. Are the County Commissioners of Madison County required to pay Justice of the Peace of District 5, fee for each conviction and sentence?

2. In view of the decision in the case of O. B. Evans vs. S. H. Moore, 3rd Judicial Circuit, Florida, in and for Madison County, do Justices of the Peace in Madison County now have trial jurisdiction?

3. If the answer to the second question is in the affirmative, under what circumstances and authority?

To: *Honorable Dale M. Leslie, Clerk of Circuit Court, Madison County, Madison, Florida:*

.....
The answer to your first question is answered in the negative.

..... Therefore your second question is answered in the negative which obviates the necessity of answering your third question.

April 25, 1950—050-215

CONSTABLES—NO AUTHORITY TO APPOINT DEPUTY—
HIGHLANDS COUNTY

QUESTION: Whether the constable of District 2, Highlands County, has the authority to appoint a deputy.

To: *Honorable Lewis I. Butler, Constable, District 2, Sebring, Florida:*

.....
In view of the foregoing it is my opinion that the constable of District 2, Highlands County, does not have the authority to appoint

a permanent deputy for the general discharge of the duties of his office.

May 2, 1950—050-225

CONSTABLES—WARRANTS SERVED IN NONRESIDENT DISTRICT
—SECTION 37.16, FLORIDA STATUTES APPLICABLE

QUESTION: Does a constable have authority on a warrant issued from a Justice of the Peace Court of his district where the crime was committed, to serve such warrant on an accused in another district within the same county?

To: *Honorable A. B. Tidwell, Constable, Marianna, Florida:*

.....

This seems to indicate that a constable may make service of a warrant in any district of his county provided that he shall not be entitled to a greater mileage in any case in serving the warrant than he would be if said warrant was issued and served in a district in which said constable resides and for which he was elected.

In view of the foregoing the answer to your question is in the affirmative, subject to the above provisions.

May 15, 1950—050-239—050-192—050-78—050-119.

JUSTICES OF THE PEACE—CIVIL CASES—MISDEMEANORS—
FELONIES—PROCESS FOR ARREST—INQUESTS OF THE
DEAD—JURISDICTION OWN DISTRICT—
MADISON COUNTY

QUESTIONS: 1. Does said justice of the peace have jurisdiction to try civil cases not exceeding one hundred dollars?

2. Does said justice of the peace have trial jurisdiction to try misdemeanors committed in his district?

3. Although said justice of the peace has no trial jurisdiction in felony cases, does said justice of the peace have jurisdiction to hold examination of such felonies committed in his district?

4. May said justice of the peace issue process for arrest of any person charged with felony or misdemeanor not committed in his district and make same returnable to himself or to county judge for disposition, commitment or bail, as the case may be?

5. Does said justice of the peace have power to hold inquest of the dead in his district?

6. May said justice of the peace, upon appeal request the circuit court to try a case de novo?

To: *Honorable A. L. Leggett, Justice of the Peace, Madison County, Florida:*

.....

Therefore the answer to your first question is in the affirmative.

.....

In view of the foregoing it is my opinion that the Justice of the

Peace Courts in Madison County do not have criminal trial jurisdiction, therefore, the answer to your second question is in the negative.

.....

Therefore the answer to your third question is in the affirmative.

As to your fourth question, reference is made to Section 901.02, Florida Statutes.

.....

Reference is also made to Section 901.08, Florida Statutes.

.....

As a general rule justices of the peace have jurisdiction only over offenses committed or triable within their territorial jurisdiction (section 901.02, Florida Statutes). Under some circumstances warrants may be made returnable either before the issuing justice or the county judge, section 37.03, Florida Statutes, hereinabove quoted; however, as a usual thing warrants should be returnable before the justice issuing it. At least while another justice is within his district and able to act, a justice of one justice district should not issue a warrant for an offense committed within the territorial jurisdiction of such other justice.

A justice of the peace in one county, under the circumstances set out in Section 901.08, Florida Statutes, may issue a warrant, for the arrest of an accused within his district, for an offense triable in another county; however, the said warrant must be made returnable before the county judge, or the proper justice, of the county wherein the offense is triable (or was committed). This seems to answer the fourth question as definitely as the same may be answered.

As to your fifth question, I refer you to my opinions No. 050-78 and 050-119, Attorney General's Biennial Report 1950, copies attached, wherein this question is thoroughly discussed.

Section 22, Article 5 of the Florida Statutes bestows the power upon justices of the peace to hold inquest of the dead. However, Section 936.03, Florida Statutes, as amended, makes a preliminary inquiry and direction for inquest mandatory.

Therefore the answer to your fifth question is in the affirmative, subject to first obtaining approval as prescribed in Section 936.03, Florida Statutes, as amended.

.....

Therefore your sixth question is answered in the negative.

June 24, 1950—050-314

SMALL CLAIMS COURT—JUSTICE DISTRICTS—CIVIL CASES—
JURISDICTION—SECTIONS 37.01 (1), 37.06,
FLORIDA STATUTES

QUESTION: Does a small claim court of the Justice of the Peace District 6, Jackson County, have jurisdiction to try civil cases arising in an adjoining district although there is no justice of the peace located in said adjoining district?

To: Honorable E. C. Davis, Justice of the Peace, Marianna, Florida:

.....

The answer to your question is in the negative.

July 25, 1950—050-364

JUSTICE OF THE PEACE COURTS—MISDEMEANORS—TRIAL
JURISDICTION—CHAPTER 26342, LAWS 1949; SECTION
37.01 (4), FLORIDA STATUTES—

QUESTION: What effect, if any, will Chapter 26342, Laws of Florida 1949, amending Section 37.01, Florida Statutes, have upon the jurisdiction of Justice of the Peace courts of Lake County after the official return of the 1950 census?

To: *Mr. Malcolm W. McDonald, Justice of the Peace, District 14, Lake County, Mascotte, Florida:*

Section 37.01, Florida Statutes, has been amended by Chapter 26342, Laws of Florida 1949, by adding Subsection (4) which reads as follows:

"(4) Jurisdiction; in counties having a population of not less than 30,000 and not more than 45,000 according to the last preceding state census and a county court, to try and determine all misdemeanors committed in their respective districts punishable by fine not exceeding one hundred dollars or by imprisonment not exceeding three months."

Lake County has a county court. Therefore, if the 1950 official census reveals that the population of Lake County is between 30,000 and 45,000, then Lake County will come within the purview of the above statute. In that event, the justice of the peace courts of Lake County, assuming that the above quoted statutory provision is constitutional but not deciding the point, will have jurisdiction to try and determine all misdemeanors committed in their respective districts, punishable by fine not exceeding one hundred dollars or by imprisonment not exceeding three months.

August 10, 1950—050-391

JUSTICES OF PEACE—JURISDICTION—DRUNKEN DRIVING—
DRIVER'S LICENSE REVOCATION

QUESTION: Does the Department of Public Safety have the authority to revoke a driver's license upon receiving notice from a Justice of the Peace Court of conviction of the licensee in that Court for the offense of driving while intoxicated?

To: *Honorable H. N. Kirkman, Director, Department of Public Safety:*
.....

Volusia County is the only county in the state which has a population of over 50,000 inhabitants and in which no criminal court of record or county court has been established.
.....

Bay County classified by Federal census 1940; Marion County, Baker County, Madison County, St. Johns County and Putnam County, classified by 1935 state census; Holmes County and Levy county classified by last preceding state census. I find no record of the constitutionality of the several statutes referred to having been judicially determined by a court of last resort and accordingly express no opinion as to their validity, or as to the effect of the repealing

clause of the 1949 statute upon prior existing laws, both of which questions are judicial in nature.

Until these questions have been judicially determined, under existing statutes conviction by a justice of the peace in the counties named herein would appear to be a legal conviction, and as to such counties the question is answered in the affirmative.

August 24, 1950—050-414

CONSTABLES—ARRESTS—TERRITORIAL LIMITS—FEES—
COUNTY COMMISSIONERS—MILEAGE FEES

QUESTIONS: 1. Does a constable have the authority to make an arrest outside of the territorial limits of his Justice of the Peace District, but within the county?

2. If so, is the constable entitled to a fee for said arrest?

3. Where two or more county commissioners authorized to travel to a certain destination on county business, travel in the same car to said destination, is each county commissioner entitled to mileage fee?

To: *Honorable William D. Hopkins, State Attorney, Tallahassee, Florida:*

.....

By virtue of the above statute, §37.16 F.S. '49, a constable of the county in which the process issued is authorized to serve the process of the county judge's court and the justice of the peace courts in any district of said county, where same may be lawfully served.

In an opinion rendered by this office March 2, 1945, number 045-90, Attorney General's Biennial Report 1945-46, a copy attached, in which I concur, it was held that a constable has no authority to make an arrest without a warrant in any part of the county outside of his own district, except (1) upon lawful hot pursuit of a fleeing criminal; (2) when acting as a private citizen and exercising the same right as any other private citizen to make an arrest without a warrant.

In view of the foregoing, it is my opinion that a constable has no statutory authority to make an arrest outside of his justice of the peace district except as provided by statute above.

Therefore, the answer to your first question is in the negative subject to the foregoing exception.

As to your second question, Section 37.20, Florida Statutes, provides that the fees of constables shall be as provided in Section 30.23.

Section 30.23, Florida Statutes, provides a schedule of fees to be charged by the sheriffs and constables of the State of Florida.

Where the constable serves the process of the county judge's court as authorized in Section 37.16 above, said constable is entitled to the statutory fee as prescribed in Section 30.23. However, where the constable makes a service of process of the justice of the peace court in a district other than a district for which he was elected in his own county, said constable shall not be entitled to a greater mileage in any

case in serving writs from courts of the justice of the peace than he would be if the writ issued from such court in the district in which such constable resides and for which he was elected as provided in Section 37.16 above.

.....

Therefore, your third question is answered in the negative.

September 29, 1950—050-469

JUSTICES OF PEACE—PEACE BOND—FORFEITURE—SECTIONS
37.21, 903.23, 903.26, FLORIDA STATUTES APPLICABLE

QUESTIONS: 1. What is the judicial procedure followed by a justice of the peace in a case where the said justice of the peace binds over an individual to keep the peace and said individual violates the terms of his bond and breaks the peace?

2. What disposition should be made of said bond?

To: Mr. W. L. Folkes, Justice of the Peace, Panama City, Florida:

Section 37.21, Florida Statutes, 1949, provides.

.....

Where the justice of the peace, pursuant to the provisions of the above statute, binds an individual to keep the peace and said individual violates the terms of his bond and breaks the peace, the justice of the peace may direct the arrest of said individual as provided in Section 903.23, Florida Statutes.

The justice of the peace may then proceed with the case and trial for final determination.

As to your second question, Section 903.26, Florida Statutes, 1949, provides for the forfeiture of the undertaking.

Pursuant to the provision of the above statute, the justice of the peace of the court before which the cause is pending shall make a record of the case and shall declare the undertaking, and any bonds that have deposited as bail, forfeited and transmit the undertaking and any affidavits to the clerk of the circuit court of the county in which said undertaking and affidavits are filed as provided in subsection 2 above. (903.26(2) F.S.)

September 29, 1950—050-472

JUSTICES OF PEACE—CRIMINAL TRIAL JURISDICTION—NO
AUTHORITY—CHAPTER 37, FLORIDA STATUTES—
BREVARD COUNTY

QUESTION: Does the Justice of the Peace of Brevard County have any criminal trial jurisdiction concerning traffic violations or other criminal matters?

To: Honorable S. Reece Bowen, Justice of the Peace, Brevard County, Titusville, Florida:

.....

In view of the foregoing authorities, your question is answered in the negative.

JUDGES

April 4, 1949—049-145

CIRCUIT JUDGES RETIREMENT—WITHDRAWAL OF REJECTION
—CREDIT FOR PRIOR SERVICE—§38.17 F.S.

QUESTION: 1. May a circuit judge who qualifies for office in January, 1949, accept the benefits of Section 38.17, Florida Statutes 1941, despite the fact that he declined to accept the benefits of the act during a previous term of office during which he served as circuit judge?

QUESTION: 2. May a circuit judge who did not elect to accept the benefits of Section 38.17, Florida Statutes 1941, upon his appointment to the office in the year 1945 receive credit for prior years of service upon his acceptance of the benefits of the act when reappointed to the office in January, 1949?

To: *Honorable C. M. Gay, State Comptroller:*

.....

The first question is accordingly answered in the affirmative.

.....

The second question is accordingly answered in the negative.

January 20, 1950—050-37

SMALL CLAIMS COURT—NO JUDGE TO ACT—SUBSTITUTE
JURISDICTION—SEC. 38.11 F.S. '41

QUESTION: When there is no presiding justice for one of the small claims courts created by Chapter 25299, Laws of Florida, Acts of 1949, for Bay County, Florida, what disposition may be made of actions filed in said court while there is no presiding justice?

To: *Hon. D. C. Suggs, Panama City, Florida:*

.....

In the light of these observations we think that where there is a vacancy in office and no presiding justice for a small claims court, under said Chapter 25299, Laws of Florida, Acts of 1949, that when there is any cause filed or pending in the said court that the parties to the cause, or either of them, may make application to any other justice of a small claims court in the county, under Section 38.11, Florida Statutes, and that such judge has jurisdiction upon such application to try the cause. This seems to answer the above question.

JURORS AND JURY LISTS

June 30, 1949—049-286

JURORS—PERJURY CONVICTION AND CIVIL RIGHTS RE-
STORED—COMPETENT TO SIT ON JURY—§§90.07, 40.01 F.S.

QUESTION: 1. Is a person who has been convicted of perjury and afterwards restored to civil rights competent to testify on his voir dire examination as to his competency and qualifications to sit on a jury?

2. Is such a person competent to serve on a jury?

To: *Honorable E. C. Welch, Circuit Judge, Marianna, Florida:*

.....

..... we feel that both questions should be answered in the affirmative.

August 12, 1949—049-375

**JURY COMMISSIONERS—JURY LIST—AUTHORIZED TO INCLUDE
NAMES QUALIFIED FEMALE PERSONS—POLK
COUNTY—§40.01(1)**

QUESTION: Are the Jury Commissioners of Polk County, Florida, permitted to select and list for jury duty women who are otherwise known or believed to be qualified, in view of the provisions of Section 2, Chapter 22203, Laws of Florida, Acts of 1943, and Chapter 25126, Laws of Florida, Acts of 1949?

To: Honorable D. H. Sloan, Jr., Clerk and Auditor, Board of County Commissioners, Bartow, Florida:

.....

..... the above question properly is answered as follows:

The Jury Commissioners of Polk County, Florida, in selecting and listing the names of persons for jury duty in that county, as contemplated in Chapter 22203, are authorized to and shall include therein the names of female persons, known or believed to be qualified, taken from those who have registered with the Clerk of the Circuit Court their desire to be placed on the jury list, as provided in amended subsection 40.01 (1).

August 25, 1949—049-408

**JURY COMMISSIONERS—JURY LIST—AUTHORIZED TO INCLUDE
NAMES QUALIFIED FEMALE PERSONS—DUVAL
COUNTY—§40.01—TESTING THE LAW**

QUESTIONS: 1. Are the Jury Commissioners of Duval County, Florida, permitted to select and list for jury duty, women otherwise known or believed to be qualified, in view of the provisions of Section 2, Chapter 16058, Laws of Florida, Acts of 1933 and Chapter 25126, Laws of Florida, Acts of 1949?

2. What procedure might be instituted to judicially test the foregoing question?

To: Honorable Wayne E. Ripley, County Solicitor, Duval County, Jacksonville, Florida:

The questions are answered in their numbered order as follows:

(1) The question presented here was considered by this office in relation to the Polk County act by opinion dated August 12, 1949, our No. 049-375 such former opinion furnishes adequate answer to the question stated. where in the laws of Florida pertaining to jurors and preparation of jury lists, reference is made to male persons "such reference shall in each instance be taken and construed to mean male and female persons.".....

(2) Grave doubt exists that quo warranto is applicable for this purpose. It is quite probable that the question might be tested in proceedings for writ of prohibition brought by a defendant confronted with a selection of jurors claimed by him illegal and available for his trial. I know of no other proceedings which might be instituted in the Supreme Court at this time. That appears to leave only

mandamus or proceedings for declaratory decree in the Circuit Court of Duval County, under proper facts and circumstances in relation to the question.

June 16, 1950—050-299

**COUNTY COMMISSIONERS—JURORS—SELECTION AS INDIVIDUALS—WHITE OR BLACK—QUALIFICATIONS REQUIRED—
SECTIONS 40.01, 40.07, FLORIDA STATUTES**

QUESTION: Just what is to be done by a Board of County Commissioners with reference to the placing of a negro citizen in the jury box, in order to comply with the requirements of *Cassell v. Texas*, 70 S. Ct. 629, 94 L. Ed. 563 (Adv.), recently decided by the Supreme Court of the United States?

To: Honorable Onan Whitehurst, Attorney for Board of County Commissioners, Brooksville, Florida:

.....
..... the thing to do in order to comply with his opinion is to select jurors as individuals, and not as whites or blacks, for each jury list and let the percentages of whites and blacks be what they will.

PROVISIONS RELATING TO COURTS, GENERALLY

November 30, 1949—049-570

**CRIMINAL COURT OF RECORD MONROE COUNTY—COUNTY SOLICITOR NOT ENTITLED TO EXPENSES UNDER
SECTION 43.01 (2), F. S.**

QUESTIONS: 1. Is the County Solicitor of the Criminal Court of Record for Monroe County, Florida, entitled to expenses under Subsection (2), Section 43.01, Florida Statutes, formerly Section 145.06, Florida Statutes, 1941, as amended, in view of the passage of Chapter 23790, Laws of Florida, 1947?

2. In the event said Solicitor is entitled to expenses, can the Board pay him a flat \$50.00 or \$60.00 a month or will he have to requisition the Board and payments be made directly to the persons performing services or furnishing supplies?

To: Honorable Paul E. Sawyer, Legal Advisor for Monroe County, Key West, Florida:

.....
..... until the courts have construed said Section 43.01, the first above question should be answered in the negative. The first question being answered in the negative the second question need not be answered.

CHAPTER VI

CIVIL PRACTICE AND PROCEDURE

TRIAL PRACTICE AND PROCEDURE

March 11, 1949—049-104

DUVAL COUNTY—JUVENILE COURT—FUNDS DEPOSITED IN COURT REGISTRY—KEEPING AND DISBURSING— §§54.04, 54.05 F. S.

QUESTION: What procedure should be followed in keeping and disbursing funds deposited in the registry of the juvenile court in Duval County, Florida, pursuant to order of the circuit court under the authority of Chapter 21855, Laws of Florida, Acts of 1943?

To: Honorable Russell W. Cummings, Jacksonville, Florida:

.....

Section 54.04 and 54.05, Florida Statutes, provides that where funds are paid into the registry of any court in this State that it shall be forthwith deposited in a designated state depository or in the state treasury, to be withdrawn by check or voucher signed by the judge of such court and countersigned by its clerk.

..... These deposits seem to be within the purview of Section 54.05. The funds should be withdrawn by check or voucher signed by the judge of the court and countersigned by the clerk of the juvenile court.

LEGAL AND OFFICIAL ADVERTISEMENTS

April 23, 1949—049-179

NEWSPAPER—CHARGE IN EXCESS OF STATUTORY RATES— NO CRIMINAL OFFENSE

QUESTION: May a newspaper editor be prosecuted under Section 49.06, Florida Statutes 1941, as amended by Chapter 23663, Acts of 1947, for overcharging, meaning that he charges more than seventy cents per square inch for legal advertising?

To: Honorable Vincent Peele, Acting Prosecuting Attorney, Okeechobee County, Okeechobee, Florida:

.....

..... your question must be answered in the negative.

JUDGMENTS AND EXECUTIONS

October 7, 1949—049-476

SMALL CLAIMS COURT—LEON COUNTY—JURISDICTION—POWER TO ISSUE EXECUTIONS UPON JUDGMENTS— §§55.15, 55.16, 55.17, 55.18

QUESTION: Where the enactment creating a small claims court for a county in this state does not specifically provide for the issuance

of executions for the enforcement of the judgments of such court, may the said court nevertheless issue executions for the enforcement of its judgments?

To: Honorable George W. Atkinson, Judge, Small Claims Court, Tallahassee, Leon County, Florida:

..... it seems clear that the Small Claims Court of Leon County, Florida, has jurisdiction and power to issue executions upon judgments rendered by it and to enforce such judgments and to make them effective.

FLORIDA CHANCERY PROCEDURE LAW

December 21, 1949—049-600

COURT REPORTERS—PAY FOR WORK—FEDERAL COURT— ADMINISTRATIVE PROCEEDINGS—SECTION 63.50, F. S.

QUESTIONS: 1. Should Federal court reporters be paid under the State statute or under the order of the District Court?

2. What should be the basis of payments of official court reporters when taking testimony of administrative proceedings as distinguished from court proceedings?

3. What should be the basis of pay of non-official court reporters when (a) taking court proceedings, (b) taking administrative proceedings as distinguished from court proceedings?

To: Honorable Clarence M. Gay, State Comptroller:

As to your first question, the court reporters serving in the Federal courts should be paid in accordance with the Order of the District court.....

As to your second question, as far as I am informed there is no distinction between the payment of official court reporters when taking testimony in court proceedings or administrative proceedings.

As to your third question, the basis of the pay of non-official court reporters when taking court proceedings and administrative proceedings should be the same, and in accord with the language of Section 63.50, Florida Statutes.....

DIVORCE, ALIMONY AND CUSTODY OF CHILDREN

December 20, 1949—049-598

FOREIGN DIVORCE—JURISDICTION—RECOGNITION

QUESTION: Would the courts of Florida recognize a decree of divorce obtained in the Circuit Court for Civic Matters in Salzburg, Austria, by an American citizen, domiciled in Pennsylvania but actually living in Austria, from a woman who is a resident of Florida?

To: Honorable Fuller Warren, Governor:

.....
I am, therefore, of the opinion that the decrees of the Austrian Court would probably be recognized by the courts of this state, pro-

vided such court had jurisdiction of the parties and the subject matter; that there had been a fair and impartial trial upon the merits, without prejudice or fraud, and in the absence of any special reason why it should not be given full credit.

MISCELLANEOUS COURT PROVISIONS

July 9, 1949—049-317

UNCLAIMED FUNDS CORPORATIONS—LIQUIDATION—STATE TREASURER TO DEPOSIT IN SCHOOL FUND— SECTION 69.04, F. S.

QUESTION: What disposition should be made of unclaimed funds, due to stockholders and creditors of a building and loan association in connection with liquidation, subsequent to August 15, 1949, on the theory that such funds have escheated to the State of Florida?

To: *Honorable J. Edwin Larson, State Treasurer:*

.....

The state treasurer should deposit the moneys in question to the credit of the permanent state school fund to become a part thereof. The funds so deposited being permanently appropriated to satisfy any court order providing for payment thereof to any claimant in proceedings pursuant to Subsection (4) of said section 69.16.

August 3, 1949—049-358

COUNTY JUDGE—AUTHORITY TO DISCHARGE ADMINISTRATOR OF ESTATE AFTER DEPOSIT OF SHARE OF MISSING HEIR IN DEPOSITORY—§§69.15, 54.04, 54.06

QUESTION: Does a county judge have authority as judge of a probate court to order an administrator to pay the distributive share of a missing heir into the registry of his court and discharge the administrator?

To: *Honorable O. P. Johnson, County Judge, Kissimmee, Florida:*

.....

..... Failing to locate the missing heir or to establish his death, you may by authority of Sections 69.15, FSA, as amended, 54.04, FSA and 54.06, FSA, proceed as follows:

1. Order the administrator to deposit that portion of the estate belonging to the missing heir in a depository designated by you and after such deposit is made, discharge the administrator, provided proper distribution has been made to all other heirs.....

March 7, 1950—050-115—049-317

JUSTICE OF PEACE—DEPOSITS TO SECURE COURT COSTS— UNUSED BALANCE—DISTRIBUTION—SECTION 69.16— FLORIDA STATUTES 1941—APPLICABLE

QUESTION: What disposition should be made of the unused portion of funds deposited for court costs with a justice of the peace in this state?

To: Honorable Joseph G. Spicola, Justice of the Peace, Tampa, Florida:

.....

In the light of the above observations and the observations made in said opinion of July 9, 1949, we feel that the funds in question may be handled as trustee funds and paid into the state treasury as provided in Section 69.16, Florida Statutes, to be used and distributed as provided in and by said section.

EMINENT DOMAIN

July 24, 1950—050-362

CLERKS CIRCUIT COURTS—STATUTORY FEES FOR SERVICES— CHAPTER 20367, ACTS 1941; SECTION 73.21, FLORIDA STATUTES APPLICABLE

QUESTION: In a proceeding in Eminent Domain to which numerous persons are made parties defendant as owners of separate parcels of land, during the pendency of which proceeding agreement is reached with some of the individual defendants as to the compensation to be paid for their separate tracts, which agreements are consummated by stipulation for the entry of judgment for the agreed amount and the recording of a judgment accordingly, may the clerk of the circuit court, whose fees are fixed by the provisions of Chapter 20367, Laws of 1941, lawfully charge the fees fixed by the cited statute in each instance in which such judgments are entered, upon the basis that each of the proceedings by which the right of the several defendants are adjudicated constitutes a separate action?

To: Honorable Alfred A. McKethan, Chairman, State Road Department:

.....

Agreements with the several defendants in an action, the nature of which is presented in your question, and proceedings for carrying such agreements into effect may not under any construction of the statutes be considered as separate actions for which the clerk would be entitled to a statutory fee as in separate actions. The question is accordingly answered in the negative.

JUSTICE OF THE PEACE COURTS: PROCEDURE

May 10, 1950—050-237

JUSTICES OF THE PEACE—CLERKS CIRCUIT COURT—FEES— PER DIEM—§§82.26(2), 28.24, 30.23, F. S.—MADISON COUNTY

QUESTIONS: 1. Is justice of the peace in Madison County allowed per diem for attendance of his own court?

2. Is justice of the peace in Madison County allowed 5% fee for moneys he derives from fines and bond estreatures when he deposits same in Fine and Forfeiture Fund for Madison County?

3. If not, is anyone entitled to 5% of this money?

To: Honorable Dale M. Leslie, Clerk of the Circuit Court, Madison County, Madison, Florida:

Your first question is answered in an opinion by my predecessor

in office No. 042-423 dated 27 August 1942, Attorney General's Biennial Report 1941-1942, copy attached, with which I concur.

.....

..... the answer to your second question is in the negative.

..... your third question is in the negative subject to the above exception.

FORCIBLE ENTRY AND UNLAWFUL DETAINER

July 29, 1949—049-346

COUNTY JUDGES—JURISDICTION TO ENTER JUDGMENT IN EXCESS OF \$100.00—CHAPTER 82, F.S.

QUESTION: May a county judge, in a proceeding in forcible entry and unlawful detainer under Chapter 82, Florida Statutes, enter a judgment for damages in excess of one hundred (\$100.00) dollars?

To: Honorable Joseph W. Bailey, County Judge, Panama City, Florida:

.....

..... we doubt the jurisdiction of the county judge to award damages for detention of real property in proceedings in forcible entry and unlawful detainer where the *demand* involved exceeds one hundred dollars. The limitation appears to be upon the amount of the demand or demands involved and not upon the amount in which a judgment may be entered.....

The above question may, therefore, be answered in the affirmative; provided that none of the demands for which such damages are awarded exceeds one hundred dollars each, the plaintiff having observed the rules in regard to splitting or aggregating causes of action to affect jurisdiction. (See *Director General of Railroads v. Wilford*, 81 Fla. 430, 88 So. 256).

CHAPTER VII ELECTORS AND ELECTIONS

PERMANENT SINGLE REGISTRATION SYSTEM

November 17, 1949.—049-553.

ELECTIONS—REGISTRATIONS—REREGISTRATIONS—BRADFORD COUNTY—CHAPTERS 25152, 25391, ACTS 1949

QUESTION: Should the county officials of Bradford County, by appropriate action, make effective in said county on January 1, 1950, the permanent registration system provided by Chapter 25391, Laws of Florida, Acts of 1949; may they disregard the requirements of Chapter 25152, Laws of Florida, Acts of 1949, relating to the reregistration of electors in said county?

To: *Honorable A. J. Thomas, Clerk Circuit Court, Bradford County, Starke, Florida:*

.....

In my opinion the above question is answered as follows:

Both of these acts have their respective fields of operation in Bradford County, depending upon the conditions hereinafter stated.

If the Board of County Commissioners of that county, by appropriate action as prescribed by Chapter 25391, shall make the permanent registration system provided by said act effective in that county on January 1, 1950, the registration of electors in the county will be controlled by the provisions of Chapter 25391, and in that event the requirements of Chapter 25152 shall be disregarded.

On the other hand, should the Board not make effective such permanent registration system set up by Chapter 25391 on January 1, 1950, the provisions of Chapter 25152 shall control with respect to the registration and reregistration of electors in the county.

Since Chapter 25152 requires that the registration and reregistration thereunder should be proceeded with immediately upon that act becoming a law, it is suggested that should the officials of the county install and make effective the permanent registration system provided by Chapter 25391 by January 1, 1950, they should take action to do so without delay.

January 10, 1950.—050-11.

REGISTRATION—ORANGE COUNTY—PURGING LIST— CHAPTER 97, F. S. '41

QUESTION: Are the provisions of Section 5, Chapter 24232, Laws of Florida, Acts of 1947, relating to the procedure for the periodical removal of names from the registration records of Orange County, affected by the provisions of Section 8, Chapter 25391, Laws of Florida, Acts of 1949?

To: *Mrs. Pearl S. Yancey, Orange County Supervisor of Registration:*

..... the question is answered in the negative.

July 31, 1950.—050-369.

SUPERVISORS OF REGISTRATION—CANCELLATION OF REGISTRATION—DUTIES CONCERNING MAILING NOTICES—SECTION 12(A); CHAPTER 23903, LAWS 1947

QUESTION: Under the provisions of Section 12(A) Chapter 23903, Laws of Florida, Acts of 1947, which requires the supervisor of registration, "beginning in the year 1951, and during the year 1951, and every four years thereafter," to mail a notice to each registered voter setting forth the matter and to accomplish the purpose set forth in said subsection, may the mailing of such notices be delayed until after October 1, 1951?

To: *Honorable DeWitt Upthegrove, Supervisor of Registration, Palm Beach County, West Palm Beach, Florida:*

.....

There appears to be no particular time during the year 1951 when the supervisor of registration, in pursuance of subsection 12(A), Chapter 23903, Laws of 1947, should mail notices to registrants, as provided in such provision of law. Nevertheless, that official should take into consideration two things in this connection: that the purge of registrants contemplated by this subsection should be completed during the year 1951; and, to avoid possible confusion and difficulty, the regular biennial school district election in November, 1951, might well be kept in mind by the supervisor of registration in fixing the time to purge the records in the manner set forth in subsection 12(A) of Chapter 23903.

October 5, 1950.—050-477; 050-118.

GENERAL AND MUNICIPAL ELECTIONS—REGISTRATION BOOKS—CLOSING TIME—CHAPTER 97, FLORIDA STATUTES—INDIAN RIVER COUNTY

QUESTION: Indian River County heretofore adopted the permanent single registration system provided by Chapter 97, Florida Statutes, 1949. Subsequent thereto the City of Vero Beach adopted that system. Chapter 22500, Laws of 1943, provides the charter for such municipality; and in pursuance thereof a city election is required to be held on December 12. Section 90 of Chapter 22500 provides that the registration books of the City shall open thirty days before an election and close five days before the election. The 1950 general state and county election will be held on November 7. When do the registration books of Indian River County close for registration prior to such municipal election?

To: *Honorable Sherman N. Smith, Jr., Attorney at Law, Vero Beach, Florida:*

.....

The registration books in Indian River County shall close for registrations the "thirtieth day before" November 7, 1950, only in so far as the 1950 general state and county election is concerned. The registration books of Indian River County shall close the "thirtieth day before" December 12, 1950, the date the city election is held in the City of Vero

Beach in so far as that election is concerned. This should occasion no confusion. The duplicates of registrations furnished for the use of election officials at the 1950 general election would not include therein records of electors of the county, in precincts located in the City of Vero Beach, who may register subsequent to the thirtieth day before the general election. The records of the system required for the municipal election, as contemplated by Section 97.04, would include those electors of the county in precincts located in the city who registered up to the closing of such books prior to the municipal election on the thirtieth day before the date same is held.

QUALIFICATIONS AND REGISTRATION OF VOTERS

January 5, 1949.—049-3.

MUNICIPAL ELECTION—PINELLAS COUNTY—REGISTRATION BOOKS—CLOSING DATE

QUESTION: Under the permanent registration provided by Chapter 24214, Laws of Florida, Acts of 1947, for all primary, general, special and municipal elections in Pinellas County, when should the registration books be closed prior to a municipal election in said county?

To: *Honorable Warren A. Wright, Supervisor of Registration, Pinellas County:*

.....

In view of the fact that said Chapter 24214 became a law on June 16, 1947, it is assumed that no special act applying to a municipality in Pinellas County and in conflict with said chapter became a law thereafter; and this opinion is conditioned upon such assumption. Chapter 24214 requires such registration books to close thirty days before elections; hence, it would appear that as long as such provision remains as it now is, registration books shall close thirty days before an election held in a municipality in said county.

January 7, 1949.—049-5.

LEGISLATIVE OFFICE—FILLING VACANCY CAUSED BY DEATH— §§98.08-98.10, 102.73 F. S.

QUESTION: What laws are applicable with respect to a special election to fill the vacancy in office occasioned by the recent death of Hon. Richard Oelkers, Jr., one of Dade County's representatives in the State Legislature, and what duties devolve upon the Governor, other public officials and political parties in relation to such special election?

To: *Honorable Fuller Warren, Governor of Florida:*

The laws directly applicable to the filling of such vacancy are sections 98.08, 98.09, 98.10 and 102.73, Florida Statutes, 1941, as amended.

.....

April 19, 1949.—049-164.

MUNICIPAL ELECTIONS—CITY, ST. PETERSBURG BEACH— PERMANENT REGISTRATION SYSTEM—MANDATORY

QUESTION: Are the qualifications of electors for municipal elections in the City of St. Petersburg Beach determined by Section 16,

Chapter 22463, Laws of Florida, Acts of 1943, or by Section 10, Chapter 24214, Laws of Florida, Acts of 1947?

To: *Honorable Sheldon A. Linsey, City Attorney, St. Petersburg Beach, Florida:*

.....

..... Only the courts in a proper proceeding could with finality determine the legal question here involved. In the absence of court adjudication, the position must be here taken that the qualification of electors for said city are determined by Section 10 of Chapter 24214; and that the registration provided by said act must be used "in the holding of all elections" by such city, which seems to preclude the use of any other system of registration.

May 27, 1949.—049-234.

**SUPERVISORS OF REGISTRATION—DUTIES—SCHOOL BOND
ELECTION—NASSAU COUNTY—GENERAL LAWS APPLICABLE**

QUESTIONS: (1) Is it compulsory for the supervisor of registration of Nassau County to be in her office in person on the day of a school district bond election or may her deputy act?

(2) Is it lawful for a registered person who has become a freeholder since the closing of the registration books to have his name added to the list on the day of such election?

(3) What are the duties of the supervisor of registration in connection with such a bond election with respect to preparing ballot boxes, etc.?

To: *Mrs. Marie B. Struss, Supervisor of Registration, Nassau County, Fernandina, Florida:*

.....

The above questions are answered in their numbered order as follows:

(1) it would appear that properly such officer should be in her office on the day of such bond election.

(2) this question is answered in the affirmative.

.....

(3) It appears that other than making available necessary ballot boxes to the Board of Public Instruction, no duty devolves upon the supervisor of registration with respect to preparation of the ballot boxes, delivery of same or canvass of the votes cast at said election (Section 236.40).

August 25, 1949.—049-404.

**MUNICIPALITIES—ELECTION DISTRICTS—BOUNDARIES—
CHAPTER 25383, ACTS 1949—APPLICABLE**

QUESTION: In a county which, since prior to the adoption of Chapter 25383, has had voting precincts lying partly within and partly outside a municipality with a population of not less than 1500 according to the last state census, is it mandatory under the provisions of Section 98.23, Florida Statutes, as amended by Section 6 of Chapter

25383, Laws of Florida, Acts of 1949, that the boundaries of such precincts be changed so that no precinct shall lie partly within and partly outside such municipality?

To: *Honorable P. B. Revels, County Attorney, Putnam County, Palatka, Florida:*

.....

..... the question is answered in the affirmative.

September 7, 1949.—049-429.

ELECTION DISTRICTS—PERMANENT REGISTRATION SYSTEM—
SEMINOLE COUNTY—§98.23 F. S.

QUESTION: Is Section 98.23, Florida Statutes, as amended by Section 6 of Chapter 25383, Laws of Florida, Acts of 1949, applicable in Seminole County, in view of the provisions of Section 12, Chapter 25391, Laws of Florida, Acts of 1949, and Chapter 25019, Laws of Florida, Acts of 1949?

To: *Mrs. Luorine A. Messenger, Supervisor of Registration, Seminole County, Sanford, Florida:*

.....

..... in my opinion the question is answered as follows:

The provisions of Section 98.23, as amended by Section 6 of Chapter 25383, is applicable in Seminole County. Such amended section is in no way affected by any of the provisions of Chapters 25019 and 25391, Laws of Florida, Acts of 1949.

October 5, 1949.—049-479.

MUNICIPALITIES—ELECTION DISTRICTS—BOUNDARY LINES—
READJUSTMENT

QUESTION: In a county which since prior to the adoption of Chapter 25383, Laws of Florida, Acts of 1949, has had voting precincts lying partly within and partly outside a municipality with a population of not less than 1500 according to the last state census, what are the statutory requirements with respect to adjusting the boundaries of such precincts so that no precinct shall lie partly within and partly outside such municipality?

To: *Honorable Nevin C. Perkins, Supervisor of Registration:*

.....

On August 25, 1949, prior to the last amendment of Section 98.23 by Section 2 of Chapter 26329, Laws of Florida, Extraordinary Session of 1949, in our opinion No. 049-404, it was held that it was mandatory under Section 98.23, Florida Statutes, as amended by Section 6 of Chapter 25383, Laws of Florida, Acts of 1949, that by January 1, 1950, no election district in a county should lie partly within and partly without a municipality having a population of not less than 1500 according to the last state census. Copy of that opinion is attached hereto.

.....

Section 2 of Chapter 26329, Laws of Florida, Extraordinary Session of 1949, further amended Section 98.23,

.....

In view of the foregoing, it is my opinion that the above question is answered as follows:

The effect of Section 98.23 as amended by Section 6 of Chapter 25383 and as further amended by Section 2 of Chapter 26329, is to require that by January 1, 1952, no election district in a county shall be partly within and partly without a municipality having a population of not less than 1500 according to the last state census.

October 14, 1949.—049-491.

**SUPERVISORS OF REGISTRATION—ELECTION DISTRICTS—
BOUNDARY LINES—CHANGE—SEC. 2, CH. 26329, ACTS 1949—
EXTRAORDINARY SESSION**

QUESTION: In view of the mandatory provisions set forth in the last two sentences of Section 98.23, as amended by Section 6, Chapter 25383, Laws of Florida, Acts of 1949, and as further amended by Section 2, Chapter 26329, Laws of Florida, Extraordinary Session of 1949, what construction is to be placed upon that part of said section which provides, "but the board of county commissioners in every county of the state upon recommendation and approval of the supervisor of registration in each county may on or before the first day of February in any year in which there shall be a general election, alter or change the same . . . "?

To: Honorable Hiram Faver, Clerk and Auditor, Board of County Commissioners, St. Johns County, St. Augustine, Florida:

.....

..... Such feature of the section is not mandatory but permissive, and its purpose is obvious. It is to be borne in mind, however, that any alteration, change or creation of districts shall not conflict with the mandatory provisions set forth in the last two sentences of the section discussed above.

November 2, 1949.—049-529.

**SCHOOL DISTRICT ELECTION—MUNICIPAL ELECTION—REGIS-
TRATION BOOKS—CLOSING TIME—PINELLAS COUNTY**

QUESTION: On November 8, 1949, the regular biennial school district election will be held in Pinellas County. On December 13, 1949, an election is to be held in a municipality in said county. In view of the provisions of Chapter 24214, Laws of Florida, Acts of 1947, and the provisions of Section 98.35, Florida Statutes, as amended by Section 8 of Chapter 25383, Laws of Florida, Acts of 1949, when are the registration books of said county closed for such municipal election?

To: Honorable Warren A. Wright, Supervisor of Registration, Pinellas County, Clearwater, Florida.

.....

..... in my opinion the question is answered as follows:

The registration books of Pinellas County, in so far as said regular biennial school district election is concerned, closed on the thirtieth day prior to November 8. The registration books of Pinellas County shall remain open until the thirtieth day prior to the municipal election here

involved in so far as that election is concerned regardless of whether during a period of the time preceding said thirty day period the books are closed for said school district election.

This opinion is in accord with Opinion 049-118.

November 25, 1949.—049-564.

COUNTY COMMISSIONERS—ELECTION DISTRICTS—VOTING
PLACES—POWERS TRANSFERRED TO ELECTION BOARD—
HILLSBOROUGH COUNTY

QUESTION: Have the powers and duties prescribed by Section 98.23, Florida Statutes, as amended, for members of the board of county commissioners with respect to change, alteration and creation of election districts and establishment of voting places in such districts, been transferred to and vested in the county election board of Hillsborough County, Florida, by virtue of the provisions of Section 8, Chapter 22195, Laws of Florida, Acts of 1943, as amended?

To: *Honorable John C. Dekle, Supervisor of Registration, Hillsborough County, Tampa, Florida:*

.....

..... in my opinion the above question is answered as follows:

In Hillsborough County, the power and duty vested in the board of county commissioners concerning election districts and voting places, as set forth in Section 98.23, as amended, have been transferred to and vested in the county election board of said county by virtue of Chapter 22195, as amended by Chapters 22723 and 25522, particularly Section 8 thereof.

December 14, 1949.—049-587.

TAX COLLECTOR AS EX OFFICIO SUPERVISOR OF REGISTRATION—COMPENSATION—RIGHT TO OFFICE—WALTON COUNTY
—§§98.13, 98.14

QUESTION: At the close of the fiscal year ending September 30, 1949, the board of county commissioners of Walton County issued a warrant to the tax collector of the county to compensate him for services rendered as ex officio supervisor of registration of said county. The records of the Secretary of State's office evidence that there was issued to T. R. Spence a commission as supervisor of registration of said county for the four-year term beginning January 4, 1949. The tax collector as ex officio supervisor of registration has not cashed the warrant so delivered to him because of his uncertainty as to his right to the proceeds thereof. In view of the provisions of Chapter 12317, Laws of Florida, Acts of 1927, and Sections 98.13 and 98.14, Florida Statutes, who is the proper supervisor of registration of said county?

To: *Honorable L. E. Gill, Chairman, Board of County Commissioners, Walton County, DeFuniak Springs, Florida:*

.....

..... The right to office thus involved requires a determination of the validity and present effectiveness of Chapter 12137. The question of the right to public office is one which properly is not within the province of this office to decide. Furthermore, there is the rather settled

policy of this office, for reasons most apparent, not to attempt to pass upon the constitutionality of legislation under circumstances here found. If serious doubt exists concerning the proper person to discharge the duties of supervisor of registration in said county, the question can be speedily set at rest in proper judicial proceedings. . . .

December 27, 1949.—049-607.

ELECTORS—FOREIGN BORN CITIZEN—EVIDENCE OF NATURALIZATION—ART. VI, §1, FLA. CONST.—§98.01, F. S.

QUESTION: As prerequisite to registration, may a foreign-born person evidence to the supervisor of registration that he is a naturalized citizen of this country by any means other than his certificate of naturalization or a duly certified copy thereof?

To: Mrs. Easter L. Gates, Supervisor of Registration, Broward County:

.

. the question is answered in the negative.

August 10, 1950.—050-389.

ELECTIONS—VACANCIES—TERMS—UTILITY BOARD MEMBER—DUAL OFFICES—ART. XVIII, 6, 7, XVI, 15, FLA. CONST.—PINELLAS COUNTY

QUESTIONS: (1) When will the person elected at the 1950 general election to the office of tax collector of Pinellas County to fill the vacancy occasioned by the death in November, 1949, of the late Honorable Walter Lanier, elected to said office for the term beginning January, 1949, take office?

(2) Is there any constitutional or statutory prohibition against one person holding the party office of precinct committeeman and the public office of "member of Utility Board?"

To: Honorable E. G. Ridinger, Chairman, Democratic Executive Committee, Pinellas County, St. Petersburg, Florida:

.

. (1) The person elected to the office of tax collector of Pinellas County in the 1950 general election under the circumstances stated, shall take office on the first Tuesday after the first Monday in January, 1951.

(2) There is the prohibition in the State Constitution against one person holding two public offices at the same time (Article XVI, Section 15, Florida Constitution). The office of party precinct committeeman is not a public office within the meaning of this constitutional provision.

February 1, 1950.—050-47.

RESIDENCE—ELIGIBILITY TO VOTE—HOME DEFINED—HOLMES COUNTY—SECTIONS 98.01-11, 102.19-21, F. S. '41

QUESTION: When a person has his home located in Holmes County, Florida, and spends a certain amount of his time there, but is employed in Tallahassee or other places and maintains temporary

quarters in such place of employment, is he eligible to register and vote in Holmes County?

To: Honorable Cecil Miller, Chairman, Board of County Commissioners, Holmes County, Bonifay, Florida:

It is assumed that the word "home" as used in the question is to be construed in the sense in which it is used in Article VI, Section 1, Florida Constitution, and in Section 98.01, Florida Statutes. It is further assumed that Holmes County is operating under the general registration laws of Florida, subject to the reregistration provisions of Chapter 25153, Laws of 1949. This opinion is conditioned upon such assumptions.

.....

However, generally it may be said that a person who otherwise possesses the qualifications of an elector and who is temporarily away from Holmes County in connection with his employment at Tallahassee or elsewhere (whether such absence from Holmes County because of employment is for a period of weeks or months or years) and who has never abandoned Holmes County as his domicile or home in the constitutional sense mentioned either by word or act, continues to retain his domicile or home in Holmes County within the intent of our registration statutes. Such a person is eligible to register and vote in said county. Whether such a person has in any instances abandoned such county as his domicile or home must depend on the facts of each individual case to be considered by the supervisor.

February 3, 1950.—050-50.

POLK COUNTY—REREGISTRATION—VALIDITY OF PRIOR REGISTRATION—PRIMARY ELECTIONS—SECS. 98.22, 102.09, F. S. '41

QUESTION: Are those persons of Polk County who registered in the office of the supervisor of registration of such county during January, 1950, legally registered and qualified to vote in elections held during the year 1950?

To: Hon. Hugh E. Carlton, Supervisor of Registration, Bartow, Florida:

.....

Grave doubt exists that those persons in Polk County who registered during the month of January, 1950, are lawfully registered electors of said county and qualified to vote in the elections held during the year 1950. Because of this grave doubt, it is suggested that these persons who registered during this past month be given notice of the defective nature of their attempted registration and be afforded an opportunity to lawfully register in said books.

February 2, 1950.—050-51

ABSENTEE REGISTRATION—PERSONAL APPLICATION—ST. LUCIE COUNTY—REGISTRATION REQUIREMENTS—CHAPTERS 98, 102, F.S. '41

QUESTION: Must citizens of St. Lucie County, who are absent from the county and in Tallahassee in State service, present themselves personally before the supervisor of registration of such county for the purpose of registering or reregistering?

To: *Mrs. Elizabeth Summerlin, Supervisor of Registration St. Lucie County, Ft. Pierce, Florida:*

.....
Hence the question is answered in the affirmative.

February 15, 1950—050-65

VOTING RESIDENCE—REMOVAL OF ABODE—DOMICILE—RE-
QUIREMENT FOR REGISTERING—SEC. 98.01, F.S. '41

QUESTION: Must a citizen register in the precinct where he lives, or may he register for voting in a precinct where he formerly lived, but still claims as his home?

To: *Honorable J. M. Hendrix, Supervisor of Registration, Citrus County:*

.....
A person's domicile is the place where he has voluntarily fixed his abode, not for special or temporary purposes but with the present intention of making it his permanent home (*Minick v. Minick*, 111 Fla. 469, 149 So. 483). If a person, because of employment or for other reasons, is required temporarily to leave his home and move into another precinct, county or state, with no intent of abandoning his home as his place of domicile, even though his absence from that domicile may continue for days, months, or years, it remains his home in the sense of legal residence (*Dennis v. State*, 17 Fla. 389).

..... The place where a married man and his family resides is generally to be deemed his domicile, but such presumption may be overcome by circumstances demonstrable by proof on the question of domicile (*Smith v. Croom*, 7 Fla. 81).

It will be observed from the above that this young married couple are presumed to have established their home in the precinct where they now live. This presumption is of particular weight when there is no definite place of residence in the precinct from which this couple moved which they can call their home. However, as stated above, that presumption may be overcome by circumstances, to be supported by facts, to the effect that they have never abandoned the precinct from which they moved as their legal residence within the meaning of our registration laws. The duty devolves upon the supervisor of registration in each case wherein this question is presented, to consider all the facts in the light of the legal principles announced above and then to discharge his legal duty by arriving at such decision in the matter as he considers proper with respect to this question. It is not possible, in the absence of all the facts, circumstances, declarations of the parties involved, and other relevant factors, for this office to answer this question with greater certainty.

February 18, 1950—050-88

RESIDENCE OF VOTER—QUALIFICATION OF ELECTOR—§98.01,
F. S. '41, CON. §1, ART. VI.

QUESTION: Lawfully may an individual who is otherwise qualified, register to vote in Bradford County, if he has not been a resident of said county for six months?

To: Honorable Albert L. Crosby, Supervisor of Registration, Bradford County, Starke, Florida:

.....

In order for a person to be qualified to register to vote in Bradford County, they must at the time of registration have been a resident of the county for not less than *six months*. Hence, the question is answered in the negative.

February 25, 1950—050-95

RESIDENCE FOR VOTING—DOMICILE OF VOTER—REMOVAL OF
VOTER—STATE EMPLOYEE REGISTRATION—
SEC. 98.01, F.S. '41

QUESTIONS: (1) Can a person who lives in one county, register in another?

(2) Can a person who is employed by the state, register in any county desired?

To: Honorable Albert L. Crosby, Supervisor of Registration, Bradford County:

.....

..... (1) As to each of these cases where a man and his family "live" on Kingsley Lake, the supervisor of registration shall determine the domicile or domiciles of the persons involved according to the facts of each case and the legal principles set forth above. If the supervisor shall find in any case that the person involved who lives on Kingsley Lake has established his permanent home there or considers his place of abode at said Lake as his permanent home, then correctly the supervisor may determine that such person is a legal resident of Clay County, and properly should register in that county. On the other hand, should the supervisor find that any of such persons, at the time they started to "live" on such Lake, were legal residents of Bradford County, and that they are living only temporarily at said lake and have never otherwise abandoned Bradford County as their place of domicile or "home", then the supervisor properly may determine that such persons may be registered in Bradford County.

(2) Persons who are employed by the state are not permitted to register in any county they desire. They must register in the county of their domicile just like other electors. The fact that they are employed by the state and because of such employment *temporarily* have left their county of legal residence, does not necessarily constitute an abandonment of such county as their place of legal residence. For example, certain employees at the State Capitol, some of whom have been in Tallahassee for years as an incident of such employment, have never abandoned their domiciles in the counties from whence they came to accept such employment with the state. The same is true of certain Florida residents employed by the federal government in Washington. Thus, when the question of the domicile of an employee at the State Prison Farm is presented to this supervisor of registration, he should apply certain of the legal principles above set forth to the facts of the individual case. Should he find that at the time of employment such person was a legal resident of Bradford County and has never abandoned that residence, such a state employee

properly may be registered in Bradford County, even though because of his employment temporarily he resides at the State Prison Farm.

March 22, 1950—050-142

FLORIDA SEMINOLE INDIANS—ELIGIBLE TO REGISTER AND
VOTE—QUALIFICATIONS—SECTION 98.01, F S. '41
APPLICABLE

QUESTION: "Are Florida Seminole Indians eligible to register and vote?"

To: *Honorable John L. Hall, Supervisor of Registration, Hendry county, LaBelle, Florida:*

.....

In view of the foregoing, your question is answered in the affirmative, that is to say, Florida Seminole Indians are eligible to register and vote, provided, they meet the necessary qualifications set up by Section 98.01, Florida Statutes. (See 1933-1934 Biennial Report of the Attorney General, 541).

March 23, 1950—050-145

HUSBAND AND WIFE REGISTERED IN PHILADELPHIA—RESI-
DENCE REQUIREMENTS FOR FLORIDA REGISTRATION—
SECTION 98.01 APPLICABLE

QUESTION: Where a man and wife, who have been overseas in civil service for the last four years, returned to this country on December 21, 1949, and immediately came to Florida, may they register and vote in the May 1950, primary?

To: *Honorable Roy F. Roberts, Representative, Brevard County, Titusville, Florida:*

It appears from the facts you have stated, that this couple is registered in Philadelphia, Pennsylvania.

.....

Since this man and wife have neither been residents of Florida for one year, nor residents of Brevard County for six months, in view of the provisions of Section 98.01, Florida Statutes, they are not qualified to register and vote in Florida in the May 1950 primary. Therefore, your question is answered in the negative.

March 23, 1950—050-147

SUPERVISORS OF REGISTRATION—NAMES REMOVED FROM
LISTS—RESTORATION—CHAPTERS 24214, ACTS 1947,
26162, ACTS 1949—PINELLAS COUNTY

QUESTION: When the names of registrants are erroneously purged from the registration lists of Pinellas County, when must such persons make application to the Supervisor of Registration of said County to have their names restored to such list?

To: *Honorable Warren A. Wright, Supervisor of Registration, Pinellas County, Clearwater, Florida:*

.....

..... No time limit is prescribed within which application for

such restoration to the lists must be made; hence, such application may be made after the books are closed for registration, even up to the day of or between the primary elections.

March 25, 1950—050-149—050-47—050-65—050-88—050-95

ELECTIONS—DOMICILE OF REGISTRANTS—REGISTRATION
UNDER CHAPTER 25459, ACTS 1949—CALHOUN COUNTY

QUESTIONS: (1) May a person who has lived in Calhoun County and voted in such county, and who now lives and owns his home in Bay County, continue to register and vote in Calhoun County?

(2) When the county commissioners have redistricted the county into new commissioners' districts and an elector finds he is living in a new election and commissioner's district as a result of such change, is such elector permitted to register and vote in the old election district where he previously was located or will he be required to register and vote in the election district as the same is numbered and designated where he now lives?

(3) Must an elector of Calhoun County reregister in pursuance of Chapter 25459, Laws of 1949, in order to be eligible to vote in the primaries and general election this year?

To: Honorable Sid Parrish, Supervisor of Registration, Calhoun County, Blountstown, Florida:

(1) Under our registration laws a person is required to register and vote in the precinct where he resides. When uncertainty arises concerning the residence or domicile of a person for voting purposes, each case must be decided on the factual situation which accompanies the question. When we speak of the requirement that a person must "reside" in the district where he registers, such is meant to convey the same meaning as found in the words "habitation, domicile, home and place of permanent abode" found in Article VI, Section 1, Florida Constitution, and Section 98.01, Florida Statutes. On four occasions this year this office has issued opinions concerning this matter of residence in relation to registration, same being numbered 050-47, 050-65, 050-88 and 050-95. Copies of such former opinions are attached. These opinions deal with various situations related to this question and there seems to be no comment which could be made here not found in these former opinions. Attention is directed to these former opinions for the consideration of this supervisor of registration with respect to the factual situation which may exist as contemplated by this question.

.....

..... (2) There seems to be no question that persons properly should be registered in the precinct where they now are as a result of such redistricting. As stated above, a person is required to register and vote in the precinct where he resides.

(3) As indicated in the answer to the second question, an elector must reregister in the new books as contemplated by Chapter 25459 to be eligible to participate in any general, special or primary election held in said county after January 1, 1950.....

March 25, 1950—050-152

COUNTY COMMISSIONERS—ELECTION DISTRICTS—CHANGES—
AMENDED CHAPTER 98, FLORIDA STATUTES
APPLICABLE—PASCO COUNTY

QUESTION: (1) May the county commissioners of Pasco County, upon recommendation and approval of the supervisor of registration of said county, at this time increase the number of election districts in said county?

(2) If and when there is such a change effected in the number of election districts in said county, must there be published a notice of such changed election districts?

To: *Honorable Dove C. Falls, Supervisor of Registration, Pasco County, Dade City, Florida:*

.....

..... this question is answered in the negative.

(2) When there has been a change in the division, number or boundaries of election districts or change in or establishment of voting places in such districts, and same have been designated, described and recorded as required by Section 98.25, Florida Statutes, as amended, such designations and descriptions shall be published in the manner set forth in Section 98.26, Florida Statutes, as amended.....

March 30, 1950—050-156

SUPERVISORS OF REGISTRATION—SCHOOL TRUSTEE ELECTION
—VOTER LIST—COMPENSATION—LIBERTY COUNTY

QUESTIONS: 1. Is it permissible for an elector of a county to be registered and to vote in an election district other than that in which he resides?

2. Is the supervisor of registration entitled to compensation for preparation of a list of those electors in Liberty County eligible to vote at the regular 1949 school trustee election in said county?

3. Under the law, what is the compensation of the supervisor of registration of Liberty County? In this connection, is the supervisor entitled to compensation for names entered on the registration books by district registration officers?

To: *Honorable Bessie Reese, Supervisor of Registration, Liberty County, Bristol, Florida:*

.....

(1) It is elementary that an elector properly may register and vote only in the election district where he has his permanent place of residence or home; and it seems unnecessary to cite authorities in support of this conclusion.

(2) The supervisor of registration is entitled to payment by the school board of Liberty County for services rendered in connection with furnishing said board upon its demand, a certified list of electors eligible to participate in the regular 1949 school trustee election.

(3) The supervisor of registration of Liberty County is entitled to the following compensation for the registration of electors: (1) the

amount to be fixed and determined by the board of county commissioners, but under no circumstances not less than \$100 per annum as contemplated by Section 98.17; (2) In addition to the foregoing, twenty cents "for each and every registered elector entered in" the registration book or books of said county, as provided by Section 4, Chapter 22717, Laws of 1945, whether the names of the electors are entered in such books by the supervisor or by district registration officers.

March 11, 1950—050-186

See: Opinion No. 050-156

**SUPERVISORS OF REGISTRATION—DUTY—REQUIRE ELECTORS
TO RESIDE IN DISTRICT REGISTERED—SECTION
98.36, FLORIDA STATUTES APPLICABLE**

QUESTION: What duty, if any, devolves upon the supervisor of registration with respect to electors who are registered in election districts in which they do not reside?

To: Mrs. Bessie Reese, Supervisor of Registration, Liberty County, Bristol, Florida:

..... In view of the foregoing, in my opinion in each instance in which the supervisor of registration finds that an elector has been registered in an election district in which the elector did not reside at the time of registration, the duty devolves upon such officer under Section 98.36 to strike the name of such registrant from the registration record.

April 20, 1950—050-208

**REGISTRATIONS — VOTING RIGHTS — RESIDENTS — LANDS
TRANSFERRED PASCO CO. TO POLK CO.—SECTION 98.01,
FLORIDA STATUTES AND ARTICLE VI, CONSTITUTION
APPLICABLE**

QUESTIONS: 1. With respect to the 1950 primaries and general election, what are the registration and voting rights of those persons who reside on lands transferred from Pasco County to Polk County in pursuance of Chapters 25440 and 26347, Laws of 1949?

2. Properly may persons who were duly registered electors of Pasco County at the time the transfer of such land to Polk County became effective and who lived in the transferred territory, have their registrations transferred from the registration records of Pasco County to the registration records of Polk County?

To: Honorable Dove C. Falls, Supervisor of Registration, Pasco County, Dade City, Florida:

..... Whether the position is assumed that Chapter 25440 became effective June 13, 1949, or December 31, 1949, those persons residing in the territory transferred to Polk County, for registration and election purposes, as contemplated by Article VI, Section 1, Florida Constitution and Section 98.01, Florida Statutes, have been residents of Polk County for the period of time since they became

residents of the transferred territory, just as effectively as though the transferred territory had been a part of Polk County at the time such persons established their domiciles there. To be qualified to vote in the 1950 primaries and in the 1950 general election such persons must be registered in Polk County. Registrations in Polk County are controlled by Chapter 23943, Laws of 1947. Since the first day of February, 1950, up until thirty days prior to May 2, 1950, those persons who resided in such transferred territory and who were otherwise qualified had the opportunity to register in Polk County. With respect to the general election, such persons who did not register during the period prior to the primaries shall have the opportunity to register during the period beginning on the next day following the second 1950 primary until the thirtieth day prior to the 1950 general election.

2. Neither Chapters 25440 or 26347 contain a provision for transfer of registrations as contemplated by this question. No other law of Florida permits such a transfer. Furthermore, Chapter 23943 required a complete reregistration of all electors in Polk County to qualify them to vote in any general, primary or special election held in the year 1950. Thus, there is no lawful authority for the transfer of the registrations of affected persons from Pasco County to Polk County in the manner contemplated by the question.

May 20, 1950—050-248—049-564

COUNTY ELECTION BOARDS—CANVASSING BOARD—CHAPTER
25522, ACTS 1949 APPLICABLE—HILLSBOROUGH COUNTY

QUESTIONS: 1. Who constitutes the Hillsborough County Canvassing Board, in view of the act creating the County Election Board?

2. Who is chairman of the County Canvassing Board?

3. Is the chairman of the County Election Board only a member of the County Canvassing Board of Election?

4. Are the county commissioners in Hillsborough County under any circumstances members of the County Canvassing Board of Election?

5. In the event of absence or disability of the County Judge, the Supervisor of Registration, or the chairman of the County Election Board, who sits on the County Canvassing Board of Elections in Hillsborough County?

To: *Honorable William C. Brooker, County Judge, Hillsborough County, Tampa, Florida:*

.....

..... the Hillsborough County Canvassing Board of Elections is composed of the members of the county election board, together with the supervisor of registration and the county judge. This answers your first question.

Section 7, Chapter 22195, Acts of 1943, makes neither mention nor provisions for the designation of a chairman of the county canvassing board of elections. The enumerated duties of said canvassing board are such that there appears no necessity for the designation of a chairman. However, if it is felt that these duties of said board

could be performed with greater efficiency, there appears no impediment to the members thereof electing one of their number to act as chairman in order to achieve that purpose. This would seem to answer your second question.

.....

Thus it is my opinion, that your third question should be answered in the affirmative, that is to say, the chairman of the county election board is only a member of the county canvassing board of elections.

..... the county commissioners of Hillsborough County are never members of the county canvassing board of elections.

..... Although the act specifically designates that certain persons shall be members of this board, it is my opinion that the legislature never intended that actions of this board should be defeated because of the absence of certain specifically designated members. On the contrary, I believe this canvassing board may act in an official capacity so long as a majority of its seven members is present.

.....

This seems to answer your fifth question, i. e., the county canvassing board of elections may act in an official capacity where a majority of the members thereof are present.

.....

August 22, 1950—050-410

GENERAL ELECTION—TIME FOR OPENING REGISTRATION BOOKS—SECTION 98.22, FLORIDA STATUTES APPLICABLE

QUESTION: In those counties of Florida which are controlled by the general laws relating to the registration of electors for general elections and which have not adopted the permanent single registration system provided by Chapter 97, Florida Statutes, 1949, properly during what periods should the registration books be in the hands of district registration officers for the registration of electors?

To: Honorable W. L. Story, Supervisor of Registration, Lake County, Tavares, Florida:

It is my understanding of your statements made in connection with this request for opinion that the general registration laws of Florida relating to the registration of electors for the general election obtain in Lake County and that Lake County had not yet adopted the permanent single registration system provided by Chapter 97, Florida Statutes, 1949. It is here assumed that such is the situation in Lake County, and this opinion is conditioned upon such assumptions.

Section 98.22, Florida Statutes, 1949, is controlling with respect to this question. This provision of law requires that the general election registration books shall be open in the hands of district registration officers in the several election districts in the county during the months of January and February in each year in which there is a general election. Since the registration of electors should be accomplished in strict compliance with law, it follows that such books should not be delivered to the district registration officers except during the months in each election year stated above.

August 25, 1950—050-418—049-84

ELECTIONS—SCHOOL—LOCAL OPTION—OPENING OF REGISTRATION BOOKS—HARDEE COUNTY

QUESTIONS: 1. When should the registration books of Hardee County be opened prior to the holding of a local option election?

2. When should the registration books of Hardee County be opened prior to the holding of a "school election"?

To: Mr. Lorne Yetter, Supervisor of Registration, Hardee County, Wauchula, Florida:

.....

It is here assumed that Hardee County has not as yet adopted the permanent single registration system provided by Chapter 97, Florida Statutes, 1949; and this opinion is conditioned upon such assumption. So conditioned, it appears that the registration of electors in that county is controlled by the general registration laws set forth in Chapters 98 and 102, subject to such provisions of Chapter 22874, Laws of 1945, as may be in conflict with features of such general laws.

.....

A local option election is a special election. It is here assumed that the "school election" referred to in the second question is the regular biennial school district election, which is a general election.

The wording of Section 98.22, as now amended, as to the times when the registration books shall be open and when they shall close is unambiguous. There is no provision in said section or any other statute of this State for the closing of the registration books prior to a special election (bond elections excepted).

In view of the foregoing, conditioned as aforesaid, in my opinion the above questions properly are answered as follows:

(1) A local option election is a special election as distinguished from a general election. There is no provision in amended Section 98.22 or any other statute of Florida (except with respect to bond elections as set forth in Chapter 103, Florida Statutes) applicable in Hardee County, for the closing of the registration books prior to a special election, such as a local option election. Hence, such books shall remain open up to the time that copies thereof are required to be delivered by the supervisor of registration for use of election boards as contemplated by Section 99.01, Florida Statutes, 1949.

(2) Granting that the school election here referred to is the regular biennial school district election which is held on the first Tuesday after the first Monday in November of each even-numbered year, such is a general election, and the registration books close for registration for such an election the thirtieth day prior to the date it is held, in pursuance of amended Section 98.22.

September 6, 1950—050-432—050-147

**SUPERVISORS OF REGISTRATION—LIST OF NAMES—ERRONEOUS REMOVAL—RESTORATION—PINELLAS COUNTY—
SEE: OPINION NO. 050-147**

QUESTION: May a person whose name was erroneously removed from the registration records of Pinellas County this year prior to

the 1950 primaries, have his name restored to such records, upon making application therefor and proper showing to the supervisor of registration at any time up to and including the date of the 1950 general election?

To: *Honorable Warren A. Wright, Supervisor of Registration, Pinellas County, Clearwater, Florida:*

..... the question is answered in the affirmative.

September 22, 1950—050-451—050-196

**ELECTIONS—COUNTY COMMISSIONERS—CONSTABLES—PARTY
COMMITTEE OFFICERS—STATUTORY PROVISIONS**

QUESTIONS: "(1) Members of the Board of County Commissioners are nominated by districts in the regularly scheduled primary elections. Should they be voted on county-wide in the general election?

"(2) Constables are also nominated in the district in which he or they serve. Should they be voted on county-wide in the general election?

"(3) Should party committeemen and committeewomen, nominated without opposition in the primary, appear on the general election ticket? If so, should they be voted on in their precinct only or by county-wide vote?"

To: *Mrs. Wilma V. Stevens, Clerk Circuit Court, Citrus County, Inverness, Florida:*

(1) Members of the Board of County Commissioners are elected by the voters of the entire county (see Article VIII, Section 5, Florida Constitution; Sections 98.05 and 124.01(2), Florida Statutes, 1949).

(2) A constable is elected by the electors of the particular justice of peace district in which he runs, and not by the voters of the county at large (see Article V, Section 23, Florida Constitution, Section 98.05, Florida Statutes, 1949).

(3) Committeemen and committeewomen are not *nominated* but are elected at the second primary election in the year in which they are required to run for such party offices (Section 102.72(4), Florida Statutes, 1949). In opinion of this office dated April 17, 1950, numbered 050-196, it was held that candidates for the offices of party executive committeemen and committeewomen (state, congressional and county) who are unopposed for these party offices they sought, should not have their names printed on the second 1950 primary election ballot. Such unopposed candidates are by law declared to be elected to such offices (Section 102.34), Florida Statutes, 1949). Hence, the names of such committeemen and committeewomen *elected* at the 1950 primary, opposed or unopposed, are not to be printed on the 1950 general election ballot and are not to be voted for at such general election.

October 4, 1950—050-476

**SUPERVISORS OF REGISTRATION—ELECTOR'S AGE—REGISTRATION
RECORD—CORRECTION—CHAPTER 25293, ACTS
1949—MONROE COUNTY**

QUESTION: What procedure may be followed by the supervisor of registration of Monroe County, Florida, when an elector previously

registered under the provisions of Chapter 25293, Laws of Florida, Acts of 1949, represents that the date of birth of the registrant is in error and requests that such be changed on the record so that the same shall evidence another date of birth?

To: Honorable Samuel B. Pinder, Supervisor of Registration, Monroe County, Key West, Florida:

.....

Under the circumstances set forth in the question, if this elector represents to the supervisor of registration that the information set forth on the registration records of Monroe County concerning the elector is in error and the elector desires that the same be changed, at any time during which the registration books are open for registration the supervisor of registration should permit the elector to reregister, setting forth such information required as the elector may furnish the supervisor.

The request for opinion indicates that over a period of years the elector here involved has not been consistent with respect to the year of the elector's birth. This being true, any reregistration of the elector setting forth a date not in conformity with the elector's registration earlier this year, or back through the years when registration was required, could be of little use to establish, by itself or with other sources of information, evidence of the elector's date of birth.

November 21, 1950—050-532.

SUPERVISORS OF REGISTRATION—COMPENSATION—C. 20607, ACTS 1941—CLAY COUNTY.

Question: Is the supervisor of registration of Clay County entitled to compensation in addition to that provided by Chapter 20607, Laws of 1941, for transcribing the names of registrants into new registration books under the circumstances set forth in Section 98.34, Florida Statutes, 1949?

To: Honorable George L. Carlisle, Supervisor of Registration, Clay County:

.....

..... in my opinion the above question properly is answered as follows:

Since it appears that Chapter 20607 fixes the compensation of the supervisor of registration of Clay County, such legislation is construed in that regard as superseding and not being in addition to the provisions of Section 98.17 with respect to the compensation of the supervisor of registration. Hence, the question is answered in the negative, that is to say, that the work involved in transcribing the names of registrants from old to new registration books under Section 98.34 is but a part of the general work and duties of the supervisor and hence, such work is covered by the compensation provided by Section 4 of Chapter 20607.

December 8, 1950—050-547.

SUPERVISORS OF REGISTRATION—COMPENSATION—C. 25128, ACTS OF 1949 APPLICABLE—NASSAU COUNTY

QUESTION: Is the supervisor of registration of Nassau County entitled to compensation in addition to the \$1,800 annual salary, as

provided by Chapter 25128, Acts of 1949, for services rendered in preparing a list of freeholders for the benefit of the county commissioners in establishing a mosquito control district?

To: *Honorable T. W. Brown, Clerk, Board of County Commissioners, Nassau County, Fernandina, Florida:*

.

. your question must be answered in the negative.

HOLDING ELECTIONS AND ASCERTAINING THE RESULTS

February 1, 1949—049-36.

SUPERVISOR OF REGISTRATION — PRESERVATION OF OLD ELECTION TALLY BOOK AND OLD COPIES OF ELEC- TION FORMS—LENGTH OF TIME TO BE KEPT IN OFFICE

QUESTION: (1) May the supervisor of Registration destroy tally books used in prior elections?

(2) How long is the Supervisor of Registration required to retain in his office copies of election laws issued in connection with prior elections?

To: *Hon. Lorne Yetter, Supervisor of Registration, Hardee County, Wauchula, Florida:*

(1) there appears to be no specific statute authorizing their destruction. In the absence of such a statute these books should be retained in your office.

(2) I see no reason for you to retain those pamphlet copies of election laws issued for use of election officials in elections held prior to the year 1948.

October 21, 1949—049-501.

SCHOOL DISTRICT ELECTIONS—CLERKS—INSPECTORS—NUM- BER—SECTION 99.03—CHAPTER 25384, '49—BALLOT— FORM—SECTION 236.32 (2) (c)—APPLICABLE

QUESTIONS: 1. Do the provisions of Section 99.03, as amended by Chapter 25384, Laws of Florida Acts of 1949, concerning the number of inspectors and clerks to be appointed for election boards in election districts, apply to a biennial school district election?

2. Do the provisions of Section 99.20 as amended by Chapter 25187, Laws of Florida, Acts of 1949, and related to the form of ballot and the requirements of voters with respect to such ballot, apply to the form of ballot to be used at an election of this kind?

To: *Honorable Clarence Boswell, Attorney, Board of Public Instruction, Polk County, Lakeland, Florida:*

The questions are answered as follows:

(1) this question is answered in the affirmative.

(2) this question is answered in the negative.

October 26, 1949—049-514.

SCHOOL DISTRICT ELECTIONS—WITHDRAWAL OF SCHOOL TRUSTEE AS CANDIDATE—ONE TRUSTEE IN EACH DISTRICT

QUESTION: 1. May a candidate for school trustee withdraw as a candidate and if so is there a time limitation on such action?

2. "In a regular biennial school district election of two of the candidates receiving the largest number of votes cast at the election both reside in the same school board member residence district, would they both be declared elected as trustees, or under the existing law, can there be no more than one trustee from any one school board member residence district?"

To: *Honorable Jay Johnston, Attorney, Board of Public Instruction, Osceola County, St. Cloud, Florida:*

In my opinion your first question is answered by Section 99.11, Florida Statutes which provides in effect that a candidate may withdraw at any time up to twenty days before the election and his name would not be printed on the ballot.

With reference to your second question....I am of the opinion that there can be no more than one trustee from any one school board member residence district.

January 19, 1950—050-24.

ORANGE COUNTY—REGISTRATION—PURGING LISTS—NOTICE OF REGISTRATION—CHAPTER 24232, LAWS OF 1947

QUESTION: Under Section 5, Chapter 24232, Laws of 1947, what information should appear in the notice of registration mailed to Orange County registrants by the Supervisor of Registration to meet the requirements of said section that the Supervisor of Registration during the times and at the intervals specified shall notify each qualified voter "of the manner of his or her registration upon the registration books" as of the date of such notice?

To: *Hon. Woodford R. Smith, Orange County Board of Commissioners:*

.....

The following information as evidenced by the voter's registration record would seem to meet the requirements of Section 5 that the voter shall be notified "of the manner of his or her registration upon the registration books;" full name; address; party; precinct number; occupation; freeholder status.

March 23, 1950—050-146.

PRIMARY ELECTIONS — ELECTION BOARDS — APPOINTMENT — AMENDED SECTION 99.03, FLORIDA STATUTES APPLICABLE

QUESTION: Are the provisions of Section 99.03, Florida Statutes as amended by Section 2, Chapter 25384, Laws of Florida Acts of 1949, concerning the appointment of inspectors and clerks of elections, applicable to primary elections?

To: *Honorable D. H. Sloan, Jr., Clerk Circuit Court, Polk County, Bartow, Florida:*

Hence, the question is answered in the affirmative; that is to say, that the provisions of amended Section 99.03 are applicable to primary elections.

March 23, 1950—050-148.

COUNTY COMMISSIONERS—ELECTION BOARDS—APPOINTMENT—AMENDED SECTION 99.03, FLORIDA STATUTES APPLICABLE

QUESTIONS: 1. Are the provisions of Section 99.03, Florida Statutes, as amended by Section 2, Chapter 25384, Laws of 1949, requiring the county commissioners to appoint two election inspection boards to conduct an election in precincts having three hundred or more registered voters, mandatory?

2. If such is mandatory and the county commissioners fail to appoint two election boards and only appoint one election board, what effect could such action have on the legality of the election?

To: *Honorable Thomas J. Rivers, County Attorney, Clay County, Green Cover Springs, Florida:*

1. The provisions of amended Section 99.03 concerning the appointment of two election inspection boards to conduct an election in voting districts having three hundred or more registered voters are mandatory....

2. In the absence of an election having been held in which there was failure to appoint two election inspection boards in election districts as required by amended Section 99.03, and question raised concerning the validity of such election because of said failure, I feel I must decline to answer this question. It is assumed without doubt that boards of county commissioners will comply fully with the requirements of amended Section 99.03 concerning the appointment of inspectors and clerks of elections in their respective counties.

April 13, 1950—050-194.

COUNTY COMMISSIONERS—ELECTION DISTRICTS—POLLING PLACES—NO LAWFUL AUTHORITY TO ESTABLISH SUB-STATIONS—CHAPTER 25384, ACTS 1949

QUESTION: "Is it lawful for the Board of County Commissioners to set up and establish a sub-station for the purpose of conducting an election within a precinct within the county?"

To: *Honorable A. L. Johnson, County Attorney, Santa Rosa County, Milton, Florida:*

Hence, the question is answered in the negative.

August 7, 1950—050-385.

CONSTITUTIONAL AMENDMENT PROPOSALS—SUBSTANCE TO BE PRINTED ON GENERAL ELECTION BALLOT—SECTION 99.16 FLORIDA STATUTES

QUESTION: The Secretary of State has prepared a statement of the substance of each of the proposed constitutional amendments iden-

tified below, to be printed on the 1950 general election ballot. Does the substance of each of said proposed amendments prepared by him meet the requirements of Section 99.16, Florida Statutes, 1949?

To: *R. A. Gray, Secretary of State, Tallahassee, Florida:*

Section 99.16 provides that whenever a constitutional amendment or other public measure is submitted to the vote of the people the substance of such amendment or other public measure shall be printed on the ballot.

The following substance of each of such proposed amendments, as prepared by the Secretary of State, with suggested changes, is submitted for his consideration:

PROPOSED CONSTITUTIONAL AMENDMENTS

No. 1

To amend Article V of the State Constitution by adding thereto an additional section empowering the Legislature to create, establish and define the jurisdiction and powers of juvenile courts and of the officers thereof; to vest in such courts exclusive original jurisdiction of all criminal cases involving accused minors under any age specified by the Legislature, including the right to define offenses as acts of delinquency instead of crime; to provide for the qualification, election or selection and appointment, compensation and term of office of judges, probation officers and other officers and employees of said courts; all in such manner, for such time and according to such methods as the Legislature may prescribe and determine without being limited therein by certain existing provisions in the Declaration of Rights or other sections of the State Constitution.

No. 2

To amend Article VII, Section 5 of the State Constitution to provide that a state census will no longer be required to be taken and, beginning with federal census of 1950, adopting the preceding decennial federal census as the state census.

No. 3

To amend Article III, Section 16, of the State Constitution to provide that each law shall embrace but one subject, briefly expressed in the title, and that no law shall be amended by reference to its title only, but that the amended section, subsection or paragraph amended shall be reenacted and published at length.

No. 4

To amend Article V of the State Constitution by adding a Section 48 thereto creating the Sixteenth Judicial Circuit of Florida to consist of Monroe County, with certain provisions with reference to a Circuit Judge and a State Attorney for said circuit.

No. 5

To amend Article V by adding thereto Section 16A, providing that in counties with a population of more than two hundred fifty thousand the Legislature may provide for one additional county judge, and providing for the election, powers, duties and compensation of said additional county judge.

August 18, 1950—050-398.

WORLD FEDERAL GOVERNMENT—PROPOSED MEMORIAL TO—
GENERAL ELECTION BALLOT—PRINTING OF QUESTION—
CHAPTER 25098, ACTS 1949

QUESTION: Is the following form of heading and question for printing on the 1950 general election ballot, prepared by the Secretary of State, in pursuance of the requirements of Chapter 25098, Laws of Florida, Acts of 1949:

"PROPOSED MEMORIAL RELATING TO
WORLD FEDERAL GOVERNMENT"

"Do you as a sovereign citizen of Florida and the United States of America, direct our representative in the National Congress to urge the President and the Congress to take the lead in calling for amendments to the United Nations Charter, strengthening the United Nations into a limited World Federal Government capable of but limited to enacting, interpreting and enforcing laws to prevent war?"

To: Honorable R. A. Gray, Secretary of State:

The above form for printing upon the 1950 general election ballot appears proper, subject to the suggestion for consideration of the Secretary of State that the heading be changed to read as follows: "PROPOSED EXPRESSION OF PUBLIC OPINION RELATING TO LIMITED WORLD FEDERAL GOVERNMENT, SUBMITTED IN PURSUANCE OF CHAPTER 25098, LAWS OF FLORIDA, ACTS OF 1949."

The Secretary of State takes notice of the fact that the validity of the law requiring the submission of said question at the 1950 general election is now being contested in the courts and that the above form will be used if the court shall, in effect, find that properly the question may be submitted at the coming general election.

September 21, 1950-050-449.

SCHOOL DISTRICT BOND ELECTIONS—TIME HELD—SECTION
99.60, FLORIDA STATUTES

QUESTION: "1. May a special school district bond election be held less than thirty days prior to or less than thirty days subsequent to a city election?"

Expressed differently, would a regularly scheduled city election come within the meaning of the terms "regular primary or general election" as set forth in Section 99.60, Florida Statutes 1949, so as to preclude the holding of a bond election within thirty days prior or subsequent to said city election?

Section 99.60 states ". . . that there is excepted from the provisions of this section any election held on the day preceding or following any regular primary or general election; . . ."

2. Would the foregoing provision permit a school district bond election to be held on the day preceding or the day following a pri-

mary or general election or on the day preceding or following a city election?

3. Is a school district bond election restricted to a particular day of the week such as Tuesday or to a day of a certain week in the month?"

To: *Honorable Thomas D. Bailey, Superintendent, State Department of Education:*

.....

I think, therefore, that your first question is properly answered in the affirmative. Presumably the issue will be validated and in view of the fact that municipal elections are not specifically mentioned in the statute, I suggest that the question be raised in the validation proceedings.

An answer to question 2 is unnecessary in view of the above.

Question 3 is answered in the negative, with the exception that elections may not be held on a Sunday or on any day on which an election for another purpose is being held within the same county, district or municipality.

September 26, 1950—050-457.

VOTING MACHINES—UNOPPOSED CANDIDATES—STRAIGHT
VOTING MANDATORY—SECTION 99.191,
FLORIDA STATUTES

QUESTION: Is the following wording of Section 99.191, Florida Statutes, 1949, relating to the arrangement of candidates on voting machines, mandatory, viz., "and to permit straight voting by pulling of one lever for the candidate for all offices in which there is only one candidate for said office"?

To: *Honorable William Crawford, Clerk Circuit Court, Pinellas County, Clearwater, Florida:*

.....

..... the above question properly is answered in the affirmative.

November 1, 1950—050-513.

GENERAL ELECTION BALLOT—WRITE-IN VOTES—(X) MARK
NOT REQUIRED §§99.18, 99.19, FLORIDA STATUTES

QUESTIONS: "1. In a General Election, if an elector chooses to cast an irregular ballot on a voting machine by writing in the name of a person of his choice in its appropriate place on the machine, is it necessary and mandatory for the elector to make a cross (X) mark immediately following the name written in, or is the name sufficient to be counted as a valid write-in vote?

"2. What is the correct procedure for Precinct Election Boards and County Canvassing Boards to follow in canvassing write-in votes in instances where the name varies? As an example: A write-in Morris J. Smith appears, also other write-ins appear as M. J. Smith, M.

Smithe, etc. Should the precinct boards canvass exactly as the write-ins appear, then is it the responsibility and duty of the County Canvassing Board to consolidate the write-ins to the best of their ability where the intention of the elector is known?"

To: Honorable Rodney B. Thursby, Supervisor of Registration, Volusia County, DeLand, Florida:

(1) Under the provisions of Sections 99.18 and 99.19, Florida Statutes, 1949, a "write-in" vote, whether in those counties where voting machines or paper ballots are used, is valid without the necessity of also placing a cross mark (X) to the right of the name written in.

(2) Subject to the conditions set forth below, when it is apparent that "write-in" votes are intended for a specific individual, whether the name so written is in the full christian and surname, or the first initial and surname, or the surname is misspelled but phonetically is obviously intended as the name of such individual, all such votes should be counted for said individual. If the name as misspelled is the correct name of another individual, such vote should be counted for such individual. Thus, votes for Morris J. Smith, M. J. Smith and M. Smithe, may, in the judgment of the precinct election officials, under the standards above mentioned, be counted for Morris J. Smith.

In the light of the above, the precinct election officials in making returns of write-in votes where a variation exists in the spelling of the name, or initials are used instead of the christian name and, under the standards set forth above herein, are convinced that such write-in votes are for a single individual, the votes cast under the various forms of the name used properly may be tallied separately and sub-totalled, but totalled as votes cast for such particular individual. Write-in votes which, under the standards set forth above, in the judgment of the precinct election officials do not on their face show a clear intent that the particular write-in candidate has received such vote, shall in each instance be tallied separately under the names written in; and as to such votes, the question of the intention of the voter is a judicial question. In any instance where the misspelled name or use of wrong initials results in the name of another individual in the same voting area, such votes should be tallied and returned under the name so written in. So handled the county canvassing board will have available the votes as cast under the particular written-in names, and can make returns as contemplated by law in pursuance of the returns received from the several election precincts.

November 28, 1950—050-539.

MUNICIPAL ELECTION—VOTING MACHINES—PREPARATION
FOR "WRITE-IN" VOTING PERMITTED—HOLLY
HILL, CITY OF

QUESTION: Under the provisions of Chapter 21297, Laws of Florida, Acts of 1941, particularly Sections 141 to 151, both inclusive, should the voting machines used at the general election in the City of Holly Hill be prepared to permit "write-in" voting for persons for the office of councilman whose names are not printed on the ballot?

To: *Honorable Samuel V. Holch, Attorney at Law, Daytona Beach, Florida:*

.....
Hence the question is answered in the affirmative.

VOTING MACHINES

July 6, 1949—049-309.

GULF BEACH SERVICE DISTRICT—ELECTIONS—VOTING MACHINES REQUIRED—PINELLAS COUNTY

QUESTION: Is Gulf Beach Service District, organized and existing under Chapter 24824, Laws of Florida, Acts of 1947, required to use voting machines in elections held in said District, since Pinellas county has adopted the use of voting machines, and in view of the provisions of Sections 100.03 and 100.43, Florida Statutes?

To: *Hon. Chas. A. Robinson, Attorney, Board of Commissioners, Gulf Beach Service District, St. Petersburg, Florida:*

.....
..... the question is answered in the affirmative.

August 11, 1949—049-373.

ELECTIONS—MUNICIPAL—SPECIAL—PRIMARY—GENERAL— VOTING MACHINES—USE OF REQUIRED—SECTION 100.43, FLORIDA STATUTES

QUESTIONS: (1) Is it mandatory under Section 100.43, Florida Statutes, to use voting machines in all municipal, school, special, primary and general elections in a county which has adopted the use of such machines?

(2) May the provisions of Section 100.43 be changed or repealed with respect to any particular political subdivision by a local or special act?

To: *Honorable L. B. Poston, Chairman, County Election Board, Tampa, Florida:*

.....
..... in my opinion the above questions are answered in their numbered order as follows:

(1) Subject to the answer to the second question set forth below, under Section 100.43, Florida Statutes, it is mandatory that voting machines shall be used in all general, special, school, primary and municipal elections held in those counties which have adopted the use of voting machines.

(2) A municipality, by local or special law duly enacted, may obtain release from the effects of Section 100.43. For the reason stated above, the propriety of such an act in relation to any other political subdivision is not here considered.

October 3, 1949—049-466.

ELECTION—BIENNIAL SCHOOL DISTRICT—VOTING MACHINES —MANDATORY—REGULAR POLLING PLACES OPENED— TRUSTEES ELECTION REQUIRED

QUESTIONS: 1. In a county where voting machines have been

adopted, is it compulsory for a school board to use voting machines in a regular biennial school district election?

2. Is it necessary in such an election that there should be a voting place in each election precinct in the district?

3. If the present trustees of the special tax school district are the only ones nominated in the manner and within the time prescribed by law, would such fact in any way affect the answers to questions 1 and 2 above?

To: Honorable Amos Godby, Superintendent of Public Instruction, Leon County, Tallahassee, Florida:

1. I am of the opinion that it is mandatory that voting machines be used in biennial school district elections in those counties which have adopted the use of voting machines. This conclusion is in accord with an opinion of my predecessor No. 045-288, AGR 1945-46, page 176.

2. it would seem that all regular polling places in the district should be open for this election. This answer is in accord with an answer to the same question in our recent opinion of September 23, 1949, No. 049-452. Furthermore it is in accord with the conclusion reached by my predecessor in office in opinion No. 047-275, AGR 1947-48, page 296.

3. this would not affect in any way the answers to questions 1 and 2 above.

October 27, 1949—049-516.

SAFETY HARBOR, CITY OF—MUNICIPAL ELECTION—VOTING MACHINES—USE MANDATORY—PINELLAS COUNTY

QUESTION: The citizens of Pinellas county have approved by referendum the use of voting machines in Pinellas county. Do the provisions of Section 100.03, Florida Statutes, make it mandatory for the city of Safety Harbor to use said voting machines in the forthcoming municipal election to be held on the 15th of November 1949?

To: Honorable J. W. Rowe, City Attorney, City of Safety Harbor, Clearwater, Florida:

.

Under the provisions of this act (Sec. 100.43 FS) the city of Safety Harbor is required to use voting machines regardless of the application of Section 100.03.

Your question is therefore answered in the affirmative subject to the above explanation.

December 5, 1949—049-609.

EXPERIMENTAL USE—LEGALITY OF ELECTION—SECTION 100.04, F. S.

QUESTION: May borrowed voting machines be used on an experimental basis in primary elections at which the issue of adopting such machines permanently also is to be decided?

To: *Honorable Thomas L. Glenn, Jr., Sarasota, Florida:*

It would seem that under the authority of Section 100.04, Florida Statutes, the Board of County Commissioners of the county may borrow, accept the loan of or provide for use otherwise than by purchase, voting machines for use in the next general primary election, as contemplated by the question. However, when such machines are required for such experimental purposes grave doubt exists that the question of their adoption for use in the county may be submitted at the election at which they are so experimentally used. This conclusion is reached after a study of the case of *State ex rel. Landis, Attorney General vs. Crume et al.*, 131 Fla. 848, 180 So. 38.....

March 30, 1950—050-155.

MUNICIPAL ELECTIONS—USE OF VOTING MACHINES—REQUIREMENTS—CITY OF ST. PETERSBURG BEACH

QUESTION: The charter of the City of St. Petersburg Beach (Chapter 26208, Laws of 1949) provides in Section 6 thereof for an annual election of commissioners to be held on the first Tuesday in May of each year. Heretofore Pinellas County adopted the use of voting machines. The request for opinion states that the supervisor of registration of such county has informed the clerk of said city that there will be no voting machines available for the use of the city at its May, 1950 election, due to the general primary election falling on the same day. Under such circumstances may the city use paper ballots in conducting its election on May 2, 1950?

To: *Honorable R. M. Cargell, Clerk, St. Petersburg Beach, Florida:*

The request for opinion states that the law is mandatory that voting machines be used in municipal elections in counties which have adopted their use. This correctly announces the law as set forth in Section 100.43, Florida Statutes.....

.....

Under Section 6 of Chapter 26208, it is required that a commissioner's election be held in the City of St. Petersburg Beach, Florida, on May 2, 1950. Whether or not such election shall be held is not to depend upon the availability of voting machines for use at such election. Hence, if it is not practicable for the municipal authorities to procure voting machines for use at this election, provision shall be made for the conducting of such election by means of paper ballots and ballot boxes.

April 13, 1950—050-195.

ELECTION DISTRICTS—600 OR LESS VOTERS—ONE VOTING MACHINE ALLOWED—SECTION 100.14, FLORIDA STATUTES—ESCAMBIA COUNTY

QUESTION: In view of the provisions of Section 100.14, Florida Statutes, properly may there be used more than one voting machine in an election district containing 600 or less registered voters?

To: *Honorable Philip D. Beall, Florida National Bank Building, Pensacola, Florida:*

.....

..... The question is answered in the negative; that is to say,

that in view of the provisions of Section 100.14, caution dictates that there be used in those election districts containing not more than 600 voters, only one voting machine.

ABSENT VOTERS

June 17, 1949—049-260.

SCHOOL BOND ELECTION—ABSENT VOTING—CHAPTER 25385, ACTS 1949—NOT APPLICABLE

QUESTIONS: 1. Are the provisions of Chapter 25385, Laws of Florida, Acts of 1949, relating to absent voting, applicable to a special tax school district election?

2. If the answer to the preceding question is in the affirmative, what procedure should be followed for absentee voting?

To: *Honorable Harold S. Smith, Attorney, Board of Public Instruction, Collier County, Everglades, Florida:*

.....

In my opinion, the foregoing questions properly are answered as follows:

(1) The provisions of Chapter 25385, relating to absent voting, are not applicable to a special tax school district bond election unless the board of public instruction of the county where such district is located shall adopt such act by resolution for said election, as a means of providing for absentee voting in said election, all as provided in new Section 101.12 in the act.

(2) Should the act thus be made applicable to this election, as provided in the preceding paragraph, the attached copy of the act sets forth in detail the procedure to be followed with respect to absentee voting.

July 8, 1949—049-311.

ABSENTEE BALLOTS—MAILED TO ELECTORS OUTSIDE STATE— CHAPTER 25385, ACTS 1949 (§101.01-101.14 F. S.)

QUESTION: Under the provisions of Chapter 25385, Laws of Florida, Acts of 1949, may an absentee ballot, properly applied for as therein contemplated, be mailed to an elector outside the State of Florida?

To: *Honorable Jess Mathas, Clerk of the Circuit Court, DeLand, Florida:*

.....

..... the question is answered in the affirmative.

July 16, 1949—049-325.

ABSENT VOTING—SPECIAL REFERENDUM ELECTION—CHAPTER 25385, ACTS 1949 APPLICABLE TO VOLUSIA COUNTY

QUESTION: Are the provisions of Chapter 25385, Laws of Florida, Acts of 1949, relating to absent voting, applicable to a special referendum election to be held in Volusia County on August 9, 1949?

To: *Honorable Rodney B. Thursby, Supervisor of Registration, Volusia County, DeLand, Florida:*

.....
..... the question is answered in the affirmative.

February 10, 1950.—050-63.—Corrected 050-60.

MILITARY PERSONNEL—GOVERNMENTAL EMPLOYEES—ARMED FORCES—MAILING ABSENTEE BALLOT—CHAPTER 25385, LAWS OF 1949. SEE ALSO OPINION NO. 049-311

QUESTION: Does the absentee registration privilege for governmental employees and Military personnel apply to persons who are in the Reserve Corps of either of the Military establishments?

To: *Mrs. Lourine A. Messenger, Supervisor of Registration, Seminole County:*

.....
The real question which is presented in this request for opinion would appear to be whether or not under the provisions of Chapter 25385 an absentee ballot properly applied for as therein contemplated may be mailed to an elector outside the State of Florida. It is immaterial whether he is in governmental service, in the reserve corps of one of the military services, or otherwise occupied outside the state. This question was specifically dealt with in opinion of this office No. 049-311, dated July 8, 1949, addressed to Honorable Jess Mathas, Clerk of the Circuit Court, Volusia County, DeLand, Florida, a copy of which opinion is hereto attached. Such opinion affords an explicit answer to the question as above stated and explained.

March 17, 1950.—050-131.

SUPERVISORS OF REGISTRATION—ABSENT VOTERS—PLACE OF VOTING—SECTIONS 101.01-101.14, FLORIDA STATUTES—APPLICABLE

QUESTION: "Does a voter wishing to vote absentee prior to Election Day vote in the office of the County Judge?"

To: *Mrs. J. P. Blakeslee, Supervisor of Registration, Martin County, Stuart, Florida:*

.....
..... the question is answered in the negative.

March 30, 1950.—050-160.

REGISTRATION—REREGISTRATION—ABSENTEE VOTING—MEMBERS ARMED FORCES—REQUIREMENTS

QUESTIONS: (1) Were the laws providing for war ballots repealed?

(2) Must the supervisor of registration send to the Secretary of State the request for a war ballot from a member of the armed forces?

(3) Will registration for members of the armed forces be handled as heretofore?

To: *Mrs. Pearl S. Yancey, Supervisor of Registration, Orange County, Orlando, Florida:*

.....

(1) this question is answered in the affirmative. It is recognized, of course, that a person in the military service who otherwise can qualify may vote an absent voter's ballot under the provisions of amended Chapter 101.

(2) Since it appears that federal and state laws concerning war ballots have been repealed, the answer to this question is in the negative.

(3) Registration of electors in Orange County is controlled by Chapter 24232, Laws of 1947. Except for possible rights under Section 98.42, Florida Statutes (relating to persons inducted into military service), electors of that county must be registered in pursuance of Chapter 24232 to be eligible to vote. While Chapter 24232 repealed all laws and parts of laws in conflict therewith, in view of the purpose of Section 98.42, Florida Statutes (Sections 1 and 2, Chapter 20738, Laws of 1941) such section should not be construed to have been repealed by said chapter. A person is "inducted" into the military service when his connection with such service is in pursuance of the selective service laws of the government (*U. S. vs. Smith*, 47 F. Supp. 607). It is doubtful that there are any persons in military service at this time contemplated by Section 98.42. Nevertheless, if there are any such persons not registered under Chapter 24232 they should be permitted to vote upon the following showing: (a) that at the time reregistration was required by virtue of Chapter 24232, such persons were duly qualified and registered electors under previous registrations, and since such date their names have not been removed from such previous registration lists by operation of law; and (b) that they are in the military service of the government by virtue of induction in pursuance of selective service laws of the United States and continuously since registration was required under Chapter 24232 have remained and been detained in such service by reason of such induction.

March 30, 1950.—050-161.

SUPERVISORS OF REGISTRATION—APPLICATION FOR ABSENTEE BALLOTS—AMENDED CHAPTER 101, FLORIDA STATUTES APPLICABLE

QUESTION: Properly may the supervisor of registration personally go to the home of a person who, on account of physical disability is an "absent voter" within the meaning of amended Section 101.01, Florida Statutes, for the purpose of accepting an application for absent voter's ballot, delivering such ballot to and receiving the voted ballot from, such person?

To: *Mrs. Jessie Tinsley Carswell, Supervisor of Registration, Putnam County, Palatka, Florida:*

.....

..... the question is answered in the negative.

April 6, 1950.—050-179; 049-311; 050-63.

**ELECTORS—RESIDING OUTSIDE UNITED STATES—ABSENTEE
BALLOT MAILED TO—CHAPTER 25385, ACTS 1949 APPLICABLE**

QUESTION: Under the provisions of Chapter 25385, Laws of Florida, Acts of 1949, may an absentee ballot properly applied for as therein contemplated be mailed to an elector located outside of the territorial limits of the United States?

To: *Miss Hattie Coles, Supervisor of Registration, Leon County, Tallahassee, Florida:*

..... Hence, the question is answered in the affirmative.

April 19, 1950.—050-202.

**SUPERVISORS OF REGISTRATION—DUTIES—DISPOSITION OF
ABSENTEE BALLOTS—SECTION 101.07, FLORIDA STATUTES
APPLICABLE**

QUESTION: What is the duty of the supervisor of registration with respect to delivery to the various election boards in the county of absent ballots voted and deposited with such officer in pursuance of the provisions of Chapter 101, Florida Statutes, as amended?

To: *Honorable Pearl S. Yancey, Supervisor of Registration, Orange County, Orlando, Florida:*

.....
Hence, it appears that on the morning of election day the duty devolves upon the supervisor of registration to make delivery of such absentee ballots and other noted papers deposited with such officer, to the appropriate election inspection boards in the various precincts in the county on election day before the opening of the polls or as soon thereafter as may be possible, all as detailed and set forth in aforesaid Section 101.07.

April 19, 1950.—050-204.

**ABSENTEE BALLOTS—APPLICATION—EXECUTION—NOTARY
PUBLIC SEAL—TWO WITNESSES REQUIRED UNDER
AMENDED SECTION 101.02, FLORIDA STATUTES**

QUESTION: In the execution of the application for an absent voter's ballot as prescribed and set forth in Section 101.02, Florida Statutes, as amended, is it necessary that such application be subscribed and sworn to by the applicant in those instances when the signature of the applicant is witnessed by two witnesses?

To: *Honorable Dove C. Falls, Supervisor of Registration, Pasco County, Dade City, Florida:*

..... the question is answered in the affirmative.

May 22, 1950.—050-251.

**SUPERVISOR OF REGISTRATION—ABSENTEE BALLOTS—DE-
LIVERY TO PRECINCTS—MILEAGE ALLOWANCE—GADSDEN
COUNTY**

QUESTION: What mileage is allowable to the supervisor of registration in connection with his delivery of ballots of absent voters to the

election boards of the various precincts in his county on election day in pursuance of the requirements of amended Section 101.07, Florida Statutes?

To: Honorable J. Love Hutchinson, Supervisor of Registration, Gadsden County, Quincy, Florida:

.....
It is here assumed that the compensation allowable to the supervisor of registration of Gadsden County is fixed by the general law as set forth in Section 98.17, Florida Statutes; and this opinion is conditioned upon such assumption. The compensation of such supervisor, as provided in this general provision of law, shall be such sum or sums in proportion to the amount of work done as may be fixed and allowed by the board of county commissioners in such county. There is no specific provision of law fixing mileage to be paid to the supervisor in connection with the delivery of such absent voters' ballots; hence, the expense in connection therewith is to be determined by the board of county commissioners.

.....
JULY 19, 1950.—050-345; 050-375.

**SUPERVISORS OF REGISTRATION—ABSENT VOTERS' BALLOTS
—APPLICATION BLANKS—DELIVERY—SECTION 101.02, FLORIDA
STATUTES**

QUESTION: Under the provisions of Section 101.02, Florida Statutes, 1949, may the supervisor of registration deliver an application blank for an absent voter's ballot to any person other than an elector who requests such blank in order to apply for such a ballot?

To: Honorable Hugh E. Carlton, Supervisor of Registration, Polk County, Bartow, Florida:

.....
..... in my opinion, the above question is properly answered as follows:

The above-quoted parts of Section 101.02 would seem to restrict delivery by the supervisor of registration of such blank application to the elector who intends to make application for an absent voter's ballot, such delivery to be made personally to said elector in the office of the supervisor, or by mail directed to said elector. The request for such application blank may be made personally by the elector at the office of the supervisor of registration or by said elector by mail to the supervisor. Further, there appears to be no prohibition in the law against a person personally requesting such an application blank for another person, at the latter's direction, in which event such blank would be mailed by the supervisor of registration to the elector in whose behalf another person makes request therefor.

. Note: See also Opinion No. 050-375.

August 3, 1950.—050-375; 050-345.

**APPLICATION FOR ABSENT VOTER'S BALLOT ON FORM NOT
FURNISHED BY SUPERVISOR—SECTION 101.02,
FLORIDA STATUTES**

QUESTION: Under the provisions of Section 101.02, Florida Statutes, 1949, may the supervisor of registration deliver an absent

voter's ballot to an elector upon receipt of an application form not furnished by the supervisor but in the form prescribed by this section, duly signed and executed by the elector?

To: Hon. Hugh E. Carlton, Supervisor of Registration, Polk County, Bartow, Florida:

Opinion of this office 050-345, dated July 19, 1950, directed to the above official, held, in effect, that Section 101.02 would seem to restrict delivery by the supervisor of registration of an application form to the elector who intends to make application for an absent voter's ballot, such delivery to be made personally to such elector in the supervisor's office, or by mail directed to said elector.

A form of application for an absent voter's ballot not issued to the applicant by the supervisor of registration, but substantially in the form set forth in Section 101.02, duly executed by the applicant, shall be accepted by the supervisor of registration as meeting the requirements of Section 101.02, in so far as the sufficiency of the application is concerned, whether such form prior to its execution by the voter is prepared or caused to be prepared by the voter or by another person.

This opinion is limited to the sufficiency of the application and does not attempt to deal with the question of whether or not the applicant is entitled to an absent voter's ballot in pursuance of the further provisions of Chapter 101.

September 8, 1950.—050-438.

**SUPERVISORS OF REGISTRATION — DEPUTY — AUTHORITY —
ABSENT VOTER'S BALLOT—CHAPTER 101, FLORIDA STATUTES
—ST. PETERSBURG, PINELLAS COUNTY, FLORIDA**

QUESTIONS: 1. Is the deputy supervisor of registration of Pinellas County in charge of the supervisor's office in St. Petersburg, Florida, empowered to do and perform all or any of the things which the supervisor of registration can do with respect to absent voting under Chapter 101, Florida Statutes, 1949?

2. Is the supervisor of registration of Pinellas County authorized to administer the oath and execute the jurat in connection with an application for an absent voter's ballot under Section 101.02, Florida Statutes, 1949?

To: Honorable Warren A. Wright, Supervisor of Registration, Pinellas County, Clearwater, Florida:

(1) Such doubt exists of the authority of the deputy supervisor of registration of Pinellas County in charge of the office of the supervisor of registration in St. Petersburg to do and perform the acts and things set forth in Chapter 101, with respect to absent voters' ballots, that all of such acts and things should be done by the supervisor of registration, or his duly appointed deputies, in his office at the county seat of Pinellas County.

(2) A very strong argument can be made that in view of all the circumstances and necessities involved an applicant for an absent voter's

ballot in pursuance of the provisions of Section 101.02 may execute the same under oath before a supervisor of registration or his duly appointed deputy. Nevertheless, in view of the wording in the form, "Notary Public or other officer authorized to administer oaths", and the absence in the laws of any authority for a supervisor of registration to administer the oath and execute the jurat in connection with an application for absent voter's ballot, ordinary caution dictates the position that the supervisor as such should not assume this authority. If the supervisor is a notary public he may, of course, administer such oath and execute the jurat as such notary.

PRIMARY ELECTIONS

February 23, 1949.—049-71.

FILING FEE—REFUND—CANDIDATE—WITHDRAWAL AFTER QUALIFYING—TIME LIMIT

QUESTION: Where a person duly qualified as a candidate in the 1948 primaries for the office of member of the board of public instruction in his county and thereafter formally withdrew, may the clerk of the circuit court of his county return to him the filing fee paid by such person in connection with such candidacy upon his request therefor?

To: *Honorable Arthur W. Newell, Clerk Circuit Court, Orange County, Orlando, Florida:*

.....

If this person withdrew as a candidate prior to the time within which candidates could qualify for the office involved, the clerk properly may refund said filing fee to him. However, if this person withdrew after the time within which candidates could qualify for the office involved, properly the amount of the filing fee may not be refunded to him, unless his withdrawal was caused by the occurrence of such physical incapacity as reasonably to prevent him from engaging in a contest for the office involved.

The above opinion seems to accord with certain opinions of my predecessors in office. See A. G. R. 1929-30, pages 298, 397; 1943-44, page 153; 1945-46, page 196; opinion of this office dated March 24, 1948, No. 048-104.

June 15, 1949.—049-251.

SUPERVISORS OF REGISTRATION—AUTHORIZED TO APPOINT DEPUTY WHEN ABSENT DUE TO ILLNESS

QUESTION: May the supervisor of registration of a county in Florida in which the registration of electors is in pursuance of the general registration laws, appoint a deputy supervisor of registration to discharge the duties of the office during the period of time the supervisor is forced to be in a hospital for treatment?

To: *Honorable Teak Taylor, Supervisor of Registration, Washington County, Wausau, Florida:*

.....

..... the question is answered in the affirmative.

July 5, 1949.—049-300.

**MUNICIPAL ELECTIONS—POLITICAL ACTIVITIES PROHIBITED—
CHAPTER 25138, ACTS OF 1949—APPLICABLE TO**

QUESTIONS: 1. What political activities of state officers and employees are prohibited by Chapter 25138, as amended by Chapter 25360, Laws of Florida, Acts of 1949?

2. Do the provisions of Chapter 25138, as amended by Chapter 25360, apply to municipal elections?

To: Honorable E. W. Scarborough, State Representative, Gadsden County, Chattahoochee, Florida:

1. In the absence of an actual situation involving specific political activity of a state officer or employee in relation to an election, this general question is best answered by reference to the wording of Section 1 of Chapter 25138, as amended by Chapter 25360. . . .

2. . . . unless and until the courts in a proper case shall hold otherwise, ordinary caution dictates the position that the Act is applicable to municipal elections. Hence, the question is answered in the affirmative.

June 28, 1949.—049-297.

**SUPERVISORS OF REGISTRATION—ENTITLED COMPENSATION
FOR COPIES OF NAMES OF REGISTRANTS—POLK COUNTY—
CHAPTER 23943, ACTS 1947—SECTION 102.25, F. S. '41**

QUESTION: Is the supervisor of registration of Polk County entitled to compensation for the furnishing of copies containing the names of registrants and other information as provided in Section 102.25, Florida Statutes, in addition to the salary provided for such official by Section 7 of Chapter 23943, Laws of Florida, Acts of 1947?

To: Honorable Hugh E. Carlton, Supervisor of Registration, Polk County, Bartow, Florida:

.

. the question is answered in the affirmative; however, it is to be noted that the compensation received under Section 102.25 is a part of the income of the office as contemplated by Chapter 145, Florida Statutes.

July 23, 1949.—049-339.

**SUPERVISORS OF REGISTRATION—CHIEF DEPUTY—APPOINTMENT—CHAPTERS 19547, SECTIONS 7, 9, 23903, 1947—
ESCAMBIA COUNTY**

QUESTION: Are Sections 7 and 9 of Chapter 19547, Laws of Florida, Acts of 1939, presently effective in Escambia County?

To: Honorable M. B. Jones, Supervisor of Registration, Escambia County, Pensacola, Florida:

Two population acts, Chapter 19547, Laws of Florida, Acts of 1939, and Chapter 23903, Laws of Florida, Acts of 1947, are here discussed.

It is here assumed that such acts are valid, and this opinion is conditioned upon such assumption.

.....

..... in my opinion the above question is answered as follows:

If there was a county-wide re-registration of electors in Escambia County between January 1, 1946 and June 3, 1947, the day Chapter 23903 became a law, said chapter is not controlling as to registrations in Escambia County until January 1, 1950. If no such re-registration was had, the act became controlling in said county on January 1, 1948.

It would seem that the provision in Chapter 23903 for appointment of such deputy supervisors as might be necessary by implication has repealed or will repeal Section 7 of Chapter 19547, depending upon when the former chapter became or becomes effective in Escambia County. It does not appear that Section 9 of Chapter 19547 is in conflict or inconsistent with the provisions of Chapter 23903.

Thus, the question of whether Sections 7 and 9 of Chapter 19547 are in force in Escambia County depends upon the effective date of Chapter 23903 in that county. Prior to such effective date, neither of said sections was or is disturbed; after such effective date, only Section 9 remains in force.

September 28, 1949.—049-460.

SUPERVISORS OF REGISTRATION—FLORIDA CITIZENS EMPLOYED IN WASHINGTON, D. C.—REGISTRATION—RE-REGISTRATION IN PERSON FOR 1950 ELECTIONS

QUESTION: Must Florida citizens who are employed by the Federal Government in Washington, register in person for the 1950 primary and general elections?

To: Honorable Claude Pepper, U. S. Senator, Washington, D. C.

.....

It is remarked that in any instance, other than that noted in subdivision (d) of the succeeding paragraph, registrations must be made by the applicant personally appearing before the proper registration officer.

In those counties wherein registrations for the 1950 elections will be controlled by the general laws pertaining to primary and general elections, where no reregistration is required by recent act, the question may be answered as follows: (a) Those previously registered in the general registration books need not register again. Those desiring to vote in the 1950 general election who are not registered in such books or the primary registration books must register in the general registration books or the primary registration books. (b) Those who have previously registered in the primary registration books in election precincts in their respective counties not located wholly or in part within a city of more than 20,000 are deemed registered for all primary, general and special elections so long as they continue to reside in the election precincts in which they are respectively registered (Section 102.10, Florida Statutes). (c) In all election precincts located wholly or in part within a city of more than 20,000 and in all counties having 80,000 or more population, biennial reregistration in the primary books is required, and

for particulars concerning such, reference is made to Sections 102.12 and 102.13, Florida Statutes. (d) Where such biennial reregistration is required, Florida citizens living outside the state and employed by the federal government under the particular circumstances set forth in Section 102.14, Florida Statutes, by execution of the affidavit set forth at length in said section and the mailing of same to the supervisors of registration of their respective counties, as conditioned in said section may have their names transferred to the new books from the old books. For details of this provision of law it is suggested that the section be read.

It is quite apparent, because of the various systems and laws in this state providing for registrations in the several counties, possible recent acts setting up such systems or requiring reregistration for the 1950 elections, and the possibility of the establishment of the system there provided by Chapter 25391 in counties prior to the 1950 elections, that a complete answer to the question would require a review and digest of all such laws with their differing features and requirements, which would be a cumbersome task. Hence, it is suggested that each of the persons contemplated by the question, if not clearly informed as to registration status for the 1950 elections, should correspond directly with the supervisor of registration of their home county for specific information concerning such requirements for said elections.

December 20, 1949.—049-597.

DATA FOR ELECTION—SECRETARY OF STATE—CHAPTER 102

QUESTION: In the "data on primary elections for 1950" prepared by the Secretary of State for the purpose of printing and distribution described below, are the provisions of law therein cited correct?

To: *Honorable R. A. Gray, Secretary of State:*

This data so prepared is comprehensive. It sets forth information concerning the following: dates of first and second 1950 primaries; times for opening and closing of polls; periods registration books are open in election districts and supervisors' offices; times and places of qualification for candidates; campaign expense statements; absentee voting; and major and minor political parties.

The information so set forth appears correct from a legal standpoint subject to the following suggested changes:

(Note: Nine suggested changes are fully set forth).

January 6, 1950.—050-7.

BALLOT BOXES—METHOD OF OPENING BOXES—PRESERVATION OF BALLOTS—SEC. 102.44, 99.43, F. S.

QUESTION: Is it necessary for the supervisor of registration of Bay County to obtain a court order to open ballot boxes subsequent to elections for the purpose of removing therefrom registration books erroneously locked and sealed in such boxes by election boards?

To: *Honorable J. B. Mashburn, Bay County Supervisor of Registration:*

.....

..... the above question is answered as follows:

When registration books are sealed in the ballot boxes returned by elections boards to the supervisor of registration subsequent to a primary or other election, if it becomes necessary for such books to be removed from the boxes during the period the boxes are required to remain sealed, as set forth above, the supervisor should resort to a court order for the removal of the books from such boxes.

January 7, 1950.—050-10.

LOYALTY OATH—SPECIAL DEPUTY CLERK—BROWARD COUNTY CRIMINAL COURT OF RECORD—TERMS OF OFFICE—FILING FEE—ABSENTEE BALLOTS—CHAPTER 25046, ACTS OF 1949—SECTIONS 102.29-33, 101.07, 102.44 AND CHAPTER 104, F. S. '41

QUESTION 1. Must the clerks and inspectors of election boards and special deputy sheriffs appointed to serve at polling places on election day, execute the loyalty and anti-communist oath required by Chapter 25046, Laws of Florida, Acts of 1949?

2. What is the length of term of office for the judge, solicitor and clerk of the criminal court of record of Broward County?

3. Will the judge, clerk and solicitor of said court serve two-year or four-year terms beginning in 1950?

4. When and to whom does a candidate in the primaries for the office of the clerk of said court pay his filing fee?

5. How long must the supervisor of registration keep the envelopes and absentee ballots therein contained received after 5:00 o'clock in the afternoon of the fourth day preceding the election in which such votes were intended to be cast?

To: *Mrs. Easter L. Gates, Broward County Supervisor of Registration:*

These questions are answered in their numbered order as follows:

(1) In opinion of this office No. 049-293, dated July 5, 1949, addressed to Hon. C. M. Gay, State Comptroller, it was held that the oath provided by Chapter 25046 was not required to be taken by inspectors of elections and special deputy sheriffs at elections. While specifically the clerk of an election board was not mentioned in that opinion, obviously the opinion is applicable to such an election official. Hence, on the basis of such former opinion, this question is answered in the negative.

(2) and (3) Question might be raised as to whether or not any legal duty of the supervisor of registration is involved with respect to these questions which would warrant giving an official opinion concerning the same. However, since on September 30, 1949 our Supreme Court issued its Advisory Opinion to the Governor (42 So. 2d 170) with respect to the matters contemplated by these questions, it would seem appropriate to quote a part of such opinion in answer to these questions, as follows:

"You are advised that the judge of the Criminal Court of Record for Broward County and County Solicitor for said County as created by Chapter 25066, being elective offices under the Constitution, should be filled as provided by Section

6, Article XVIII of the Constitution as amended at the general election in 1944, that is to say, by appointment and commission 'only to the first Tuesday after the first Monday in January next after the election and qualification, of a successor'. In this case the election and qualification of a successor will take place at the General Election to be held in November 1950. The person elected at said general election should be commissioned for the balance of the term, that is to say, until the first Tuesday after the first Monday in January, 1953.

"Section 30 or Article V of the Constitution provides that the Clerk of the Criminal Court of Record shall be elected by the electors of the County in which the Court is held. The said Clerk has always been an elective officer and, while no provision is made for a clerk in Chapter 25066, the said act is passed pursuant to Sections 25 to 32, Article V of the Constitution and the provisions of Chapter 32, F.S.A. are made applicable. Since these provisions of the Constitution and the statutes provide for a clerk for the Criminal Court of Record, we think the appointment of a clerk for the Criminal Court of Record for Broward County should be made in the same manner and follow the same procedure as the appointment and election of the Judge and Prosecuting Attorney."

(4) A person who desires to be a candidate in the 1950 primaries for the office of the clerk of the criminal court of record of Broward County must file with the clerk of the circuit court of said county his sworn statement and receipt for committee assessment, if any has been levied, and pay to said official the required filing fee not later than 12:00 o'clock noon of the forty-fifth day previous to the date of the 1950 primary election (Sections 102.29 and 102.33, Florida Statutes).

.....

(5) Reasonably, the supervisor of registration is not required to keep such ballots longer than ballots voted at an election and returned to the supervisor, sealed in the ballot boxes. There is no provision of law specifically stating how long such voted ballots so sealed in ballot boxes must be retained in that state after an election, as distinguished from a primary. However, it would appear that such should be retained secure until after the period of time within which an election contest could be instituted under the provisions of Chapter 104 Florida Statutes, and during the pendency of any such suit so instituted.

January 18, 1950—050-23.

UNOPPOSED CANDIDATE—CAMPAIGN EXPENSE STATEMENT—
PARTY COMMITTEE CANDIDATE—SEC. 102.56-57, F.S. '41

QUESTIONS: "1. In view of Section 102.56(2), do candidates unopposed for primary nomination have to file their first statement of campaign expenses, as set forth in Section 102.57?

"2. Do candidates for party committeemen and women who have no qualifying fee and have no other campaign expense, nevertheless

have to file statements of campaign expense, as set forth in Section 102.57?"

To: Hon. Ted Cabot, Clerk Circuit Court, Broward County:

(1)

.....

..... it would seem that any candidate in the primary who is unopposed at the time required for the filing of the first expense statement need not file such statement.

(2) A consideration of our primary election laws leads me to the conclusion that candidates in the primary for election to the offices of party committeemen and party committeewomen need not file the expense statements required of candidates for nomination by said Section 102.57, as amended. This is in accord with rulings of my predecessors in office as follows: AGR 1931-32, page 559; AGR 1935-36, page 374; AGR 1945-46, page 193.

January 24, 1950—050-35.

FIRST CAMPAIGN EXPENSE STATEMENT—SECOND STATEMENT
—DATES FOR FILING—SECTION 102.57, F. S. '41

QUESTIONS: 1. What is the earliest date a candidate in the primaries may file the first campaign expense statement required by Section 102.57, Florida Statutes, as amended by Section 1, Chapter 25380, Laws of 1949?

2. What is the earliest date that the second of such statements may be filed by a candidate in pursuance of the requirements of said laws?

To: Honorable R. A. Gray, Secretary of State:

.....

(1) The first campaign expense statement may be filed by a candidate in the 1950 primary at any time after he qualifies for nomination for office but not later than April 22, 1950.

(2) The second campaign expense statement may be filed by such a candidate on any date after the date of the second primary but not later than June 2, 1950.

January 20, 1950—050-36.

LEGISLATIVE CANDIDATES—ASSESSMENTS—AMOUNT OF LEGISLATIVE SALARY—SEC. 102.27-31, F.S. '41

QUESTIONS: 1. Upon what amounts should the assessments to be made under Sections 102.27 and 102.31, Florida Statutes, be made as to candidates for nomination as candidates for state legislative office?

2. As the members of the state legislature are now entitled to a sum for subsistence and expenses while attending sessions of the legislature, should such sums be taken into consideration when fixing the assessments above?

To: *Hon. J. Ben Fuqua, County Attorney, Bradenton, Florida:*

..... we think that the said filing fees should now be calculated on the basis of \$600.00.

..... These authorities seem to control the second question, which should be answered in the negative.

January 23, 1950—050-41.

ELECTION DISTRICTS—CHANGES IN BOUNDARY—DEMOCRATIC
COMMITTEE DISTRICT—EFFECT OF CHANGE—
SEC. 102.07(4)

QUESTION: When a board of county commissioners makes changes in the boundaries of the election districts in the county and, among other things, creates additional ones, resulting in certain members of the county democratic executive committee being located in a different or changed district from that to which they were elected or appointed, what is the effect of such changes with respect to the party offices held by such members at the time said changes are effected?

To: *Hon. John J. Moore, Secretary Treasurer, Democratic Executive Committee, Stuart, Florida:*

A similar question was dealt with in an opinion of former Attorney General Watson dated January 6, 1948, No. 048-6, copy of which is attached hereto.

Since I agree with the comments and authorities, as distinguished from the final conclusions, found in such former opinion, reference is made to the same to make unnecessary their recitation here. The final conclusions reached in opinion No. 048-6 are here quoted as follows:

"Only our courts in proper proceedings could definitely answer the question here presented; and the remaining remarks hereof are conditioned upon such statement. In the absence of an express statutory provision or decision of our court on this question, it would seem that the question resolves itself into an essentially "party" problem, as distinguished from a "public" matter, and the present responsibility of resolving it devolves primarily upon the party committee involved. The consequences of the determination of the question may be noted as follows: (1) If it should be decided that the redistricting is to be construed as prospective as to the committee members elected in 1946 (as has been indicated in some jurisdictions), then in so far as such committee members are concerned, the new districts and numbers should be disregarded during the remainder of the terms of office of such committee members, as though such changes had not been made; (2) If it should be decided that the redistricting is not prospective as to such committee members, (as has been indicated in some jurisdictions in cases involving officers whose duties are primarily local, rather than county-wide) then in those instances where there has resulted change in boundaries of an old district (numbering being of no consequence), either by enlarging or reducing it, or by consolidating

one or more districts or parts of districts into a new one, it would appear that vacancies would exist with respect to such new and changed districts, properly to be filled by appointment by the chairman of the State Democratic Executive Committee, under authority of Section 102.07(4), Florida Statutes, 1941.

"It is remarked that heretofore, in a somewhat similar situation, I expressed the opinion that this second position was the correct one."

It is my opinion that the question is not primarily a party one. Further, I consider that this opinion should set forth a positive position with respect to the question if it is to be of benefit to the party executive committee concerned. In view of the functions and purposes of the county democratic executive committee, the fixing by law for election of such members from the various districts in the county to stated terms and the provision for the filling of vacancies, and the effect of the authorities cited in opinion No. 048-6, I consider the second position announced in the conclusions quoted from said former opinion as set forth in the preceding paragraph, is the proper answer to the above question.

February 7, 1950—050-54.

FILING FEE—AMOUNT FOR QUALIFYING—CANDIDATE FOR UN-EXPIRED TERM—SECTION 102.29-31, F.S. '41

QUESTION: The tax collector of Suwannee County, elected in 1948, has resigned effective June 1, 1950. Candidates for nomination for this office to fill the unexpired term will run in the primaries this year. Will the fact that these candidates are, in effect, running for an office for a two-year term instead of the regular four-year term, make any difference in the amount of filing fee required of such candidates for nomination for this office?

To: Honorable John H. Rowland, Jr., Clerk Circuit Court, Suwannee County, Live Oak, Florida:

.....

..... the question is answered in the negative.....

February 8, 1950—050-58.

See: OPINION NO. 050-36

QUALIFYING FEE—COMMITTEE ASSESSMENT—OFFICIAL RECEIVING FEE—LEGISLATIVE SALARY—SEC. 102.29, 102.33, 11.13, F.S. '41. SEE OPINION NO. 050-36

QUESTIONS: 1. What filing fee is required to be paid by candidates in the 1950 primaries who must qualify with the clerk of the circuit court in their county?

2. To whom should such candidates pay the committee assessment which may be fixed by the appropriate executive committee of their party?

3. Should the expense allowance (i.e. mileage and subsistence of \$7.50 a day) to members of the legislature be included as a part of such members salaries in computing the filing fee and committee assessment of a candidate for the office of state representative?

To: *Hon. George J. Dykes, Clerk Circuit Court, Tavares, Florida:*

1. Such a candidate must pay a filing fee of 3% of "the annual salary or compensation of the office sought by the candidate;" and same should be paid to the clerk of the circuit court at the time such candidate files with said clerk the sworn statement described in Section 102.29, Florida Statutes. See Section 102.31, 102.33 and 102.70, Florida Statutes.

2. . . . Hence in my opinion, those candidates qualifying under Section 102.33 properly may pay the committee assessment to the clerk of the circuit court at the time of the filing of their sworn statements and payment of their filing fees, if such clerk will accept same. To avoid all question, however, the county party executive committee by appropriate resolution should provide such permissive procedure.

3. . . . On January 20, 1950, this office issued opinion No. 050-36, copy of which is hereto attached, and which furnishes a complete answer to this question.

Note: Opinion 050-36 answered question 3 in the negative.

February 17, 1950—050-83.

**CANDIDATES—PRIMARY ELECTION—USE OF BOOK MATCHES
FOR CAMPAIGN PURPOSES NOT ALLOWED—
SECTION 102.61, F. S. '41**

QUESTION: Is it permissible for a candidate for nomination in the primaries to use match books as cards for campaign purposes?

To: *Honorable Marcus Frank, State Representative, Marion County, Ocala, Florida:*

. the question is answered in the negative.

February 16, 1950—050-85

See: OPINION NO: 050-196

**PARTY ASSESSMENTS—STATE REPRESENTATIVE FILING FEE—
PARTY CANDIDATE FILING FEE—NAME ON BALLOT—
CHAPTER 102, F. S. '41, CHAPTER 25351, LAWS
OF 1949, OPINION NO. 048-45**

QUESTIONS: 1. Where the county democratic executive committee fixes the committee assessment contemplated by Section 102.27, Florida Statutes, on January 21, 1950, for the 1950 primaries, and delivers resolution fixing such assessments to the clerk of the circuit court on January 23, 1950, is there a valid committee assessment, in view of the provisions of Section 102.28, Florida Statutes, as amended by Section 1, Chapter 25389, Laws of 1949?

2. In view of the situation as outlined in question (1) above, what filing fee is to be paid by candidates for the office of state representative?

3. In view of the situation outlined in question (1) above, what filing fee must be paid by candidates for the office of county commissioner in Highlands County in the light of the provisions of Chapter

25351, Laws of 1949? Should any difference be made because of the compensation of the Chairman of the Board of County Commissioners of said county when the chairman is or is not running for reelection?

4. Should candidates for the party offices of county democratic executive committeemen and committeewomen have their names printed on the ballot when they are unopposed for the party offices they seek?

5. In view of the provisions of section 242.02, Florida Statutes, is a candidate for the office of member of the Board of Public Instruction, for a term beginning after January 1, 1951, required to pay a filing fee with respect to his candidacy for such office in the 1950 primaries?

To: *Hon. Keith E. Collyer, Attorney, Board of County Commissioners, Highlands County:*

.....

(1)..... in the absence of a court ruling that a committee assessment made late, as found in this instance, is not a valid assessment, ordinary caution dictates the position that such assessment should be considered valid, and that the clerk of the circuit court and candidates affected by the assessment should assume without question that the assessment so made is valid.

.....

(2)..... The filing fee provided by Section 102.31 and the committee assessment as contemplated by Section 102.27 with respect to this office should have been computed on the basis of the compensation as set forth in opinion No. 050-36 of this office, copy of which is hereto attached, and which opinion should furnish a complete answer to this question.

(3)..... It is assumed that the chairman of the board of county commissioners of Highlands County is selected in the manner provided by the general law (Section 125.01, Florida Statutes), that there is no local or other act particularly applicable in said county which fixes a different procedure; and this answer is conditioned upon such assumption. Since the chairman of a board of county commissioners is selected by the members of the board from among their numbers, obviously no person runs for an office designated as chairman of a board of county commissioners. Hence, the provision for increased salary to the chairman cuts no figure with respect to qualifying for the office of county commissioner of this county. The filing fee which must be paid by candidates for the office of county commissioner in such county as required by Section 102.31 will be 3% of the annual salary fixed for each member of that board as set forth in Chapter 25351. In addition thereto, in order to qualify, a candidate for such office must pay the percentage fixed by the executive committee as the committee assessment figured on such annual salary.

(4) The candidates for party office mentioned in this question in those primary election years when they are required to run, are *elected* in the second primary. Thus, these candidates for party offices are not running for nomination but for election. Hence, whether such a candidate for party office is opposed or not, the name of the candidates should be printed on the ballot used in such second primary election.

(5) With respect to this question, at the outset reference is made to certain opinions of my immediate predecessor in office which are relevant here, and with which I agree. Heretofore, it was held that if the law provides a fixed annual salary for office, the salary for the first year is the compensation referred to in Section 102.31 (opinions numbered 046-9 and 048-35); that as to fee officers, the net amount received for the year next preceding the year of election is the compensation to be used for the purposes of Section 102.31 (opinion numbered 048-35). These former holdings are relevant here. Section 242.02, Florida Statutes, as now amended, sets forth in part that school board members shall receive \$10 per day and stated mileage for participating in each regular and special meeting of the board; provided, that such allowance shall not be made for more than 18 meetings in any one fiscal year in counties having a population of less than 80,000, according to the last preceding state or federal census. It is apparent that Highlands County falls within this proviso. Attention is directed to the fact that this section makes reference to "fiscal year"; and while it is recognized that a school fiscal year begins July 1, nevertheless, it would appear that such compensation for the purposes of Section 102.31 should be computed on the amount allowed for each such meeting—the limited number of meetings set forth in Section 242.02 and the number of meetings of the board during the year 1949 to be considered. Hence, for the purposes of Section 102.31, the annual compensation of the office here involved shall be computed on the number of meetings (regular and special) of the Highlands County School Board during the year 1949 at \$10 for each meeting, but in any event not less than 12 and not more than 18 in number. This is in accord with an opinion of my predecessor in office numbered 048-45, A.G.R. 1947-48, page 89. The same figures, of course, will be used with respect to party assessment.

Note: This opinion is corrected by opinion #050-196.

April 17, 1950-050-196.

CORRECTION OF OPINION NO. 050-85

PARTY CANDIDATES UNOPPOSED—NAMES NOT PRINTED ON
BALLOTS—SECTIONS 102.01, 102.34, 102.72, FLORIDA STATUTES

QUESTION: "Should candidates for the party offices of county democratic executive committeemen and committeewomen have their names printed on the ballot when they are unopposed for the party offices they seek?"

To: *Honorable Keith E. Collyer, Attorney, Board of County Commissioners, Highlands County, Avon Park, Florida:*

The above question appears as question (4) in an opinion of this office to the above county attorney dated February 16, 1950, which opinion is carried in the files of this office as opinion No. 050-85. Upon reconsideration of this question it is determined that the answer thereto as set forth in opinion No. 050-85 should be changed and that the following answer should be substituted therefor as the correct answer to such question:

"Candidates for the party offices of democratic executive committeemen and committeewomen (state, congressional and county) who are unopposed for the party offices they seek, shall not have

their names printed on the ballot used in the second 1950 primary. (See Sections 102.01, 102.34 and amended Section 102.72, Florida Statutes)"

Accordingly, opinion No. 050-85 is corrected to the extent set forth above herein.

February 18, 1950—050-87.

PARTY COMMITTEE ELECTION—QUALIFICATION—SEC. 102.33,
102.72 F. S. '41

QUESTIONS: (1) Must members of the county democratic executive committee of Brevard County be elected in the primary this year?

(2) What is the last day for a person to qualify as a candidate for member of the county democratic executive committee of said county?

To: *Honorable L. C. Crofton, Secretary, Democratic Executive Committee, Brevard County:*

(1) Members of such party committee must be elected in the second primary election this year (Sections 102.07 and amended Section 102.72, Florida Statutes).

(2) The deadline for a person to qualify for this party office is 12 o'clock noon, March 18, 1950. (Sections 102.291 and 102.33, Florida Statutes).

February 21, 1950—050-90.

MILITARY PERSONNEL—ABSENTEE REGISTRATION—SEMINOLE
COUNTY REGISTRATION—SECTION 102.14, CHAPTER
25019, ACTS OF 1949

QUESTION: Does the absentee registration privilege for governmental employees and military personnel apply to persons who are in the reserve Corps of either of the military establishments?

To: *Mrs. Lourine A. Messenger, Supervisor of Registration, Seminole County:*

The request for opinion evidences that there is being installed in Seminole County a new permanent registration system, which requires a re-registration of all electors; that there are a good many Seminole County men previously registered who are still in military service, and also there are a number of students who are in the Reserve Corps. It is assumed that the system mentioned is that provided by Chapter 25019, Laws of 1949, and this opinion is conditioned upon such assumption.

.....

In my opinion, for the reasons above set forth, all electors of Seminole County who desire to register and thus become qualified to vote, as contemplated by Chapter 25019, must appear in person before the proper registration officer of that county for such purpose. This applies to all electors, including persons holding federal positions, who are in military service or the reserve corps.

Thus conditioned and enlarged, the question is answered in the negative.

February 24, 1950—050-93.

ORANGE COUNTY REGISTRATION—REGISTRANT'S APPEAR-
ANCE—REGISTRATION IN WRITING—CHAP. 24232,
ACTS OF 1947, SEC. 102.11, F.S., CHAP. 25388,
ACTS OF 1949

QUESTIONS: (1) When a card from a registrant in Orange County is returned to the supervisor of registration of that county under the circumstances and as contemplated by Section 5, Chapter 24232, Laws of Florida, Acts of 1947, and it is indicated on such card that the registrant has changed his party affiliation, will it be necessary for such registrant to appear personally before the supervisor of registration and make oath or affirmation in order that the supervisor may change his party affiliation on his registration record?

(2) Under the circumstances recited in the first question, when a registrant returns such a card showing a change of name, will it be necessary for such registrant to appear in person before the supervisor of registration in order to affect such change of name on such person's registration record?

To: Honorable Woodford R. Smith, Orlando, Florida:

(1) A consideration of the purpose and intent of Chapter 24232, and with respect to this question, particularly Section 5 thereof, in my opinion indicates that upon the receipt of such a card by the supervisor of registration, without the necessity of the registrant appearing before the supervisor and without further authority, that officer should note on the registrant's record the change of party affiliation shown on the card so returned.....

(2) Except in rare instances, it would seem that where the card returned shows a change of name, such change comes about as a result of marriage. The change of name does not change the legal effect of the registration of the person involved. Hence, upon receipt of card from a registrant showing change in name, the supervisor of registration reasonably is authorized to note on the registration record such changed name without the necessity of the registrant appearing before such officer.

The answers here set forth are not necessarily applicable to other changes affecting a person's registration as shown on his returned card.

February 25, 1950—050-100.

SUPERVISORS OF REGISTRATIONS—TRANSFERS—REGISTRA-
TION RENEWAL CERTIFICATES—AFFIDAVITS—SECTION
102.14, F. S. '41—HARDEE COUNTY

QUESTION: By Chapter 22874, Laws of 1945, a reregistration of voters in Hardee County was required to qualify them to participate "in any general or primary election to be held in the year A. D. 1946, and thereafter;" and in pursuance thereof, such county-wide reregistration was had. The supervisor of registration of said county has received request for "five forms" for that number of persons working in Washington "for the Government and are not able to get away in order to register." These five persons did not reregister in pursuance

of Chapter 22874. Under the provisions of Section 102.14, Florida Statutes, if these persons file affidavits and otherwise comply with the requirements thereof, are these persons entitled to the renewal certificates of registration and transfers, as contemplated by said section?

To: Honorable Lorne Yetter, Supervisor of Registration, Hardee County:

.....

Hence, the question is answered in the negative.

March 6, 1950—050-104.

COUNTY EXECUTIVE COMMITTEE MEMBER MOVES FROM PRE-
CINCT—VACANCY—METHOD OF FILLING—SECTION
102.07, FLORIDA STATUTES— APPLICABLE

QUESTION: When a member of a county executive committee moves from the precinct in which he qualified into another precinct in the same county, does a vacancy occur in such office of committee member, in view of the provisions of Section 102.07, Florida Statutes, and Section 7 of the by-laws, of said committee, which provides that, "To be eligible for committeeman or committeewoman they must live in the precinct which they represent"?

To: Mrs. Alice Carroll, Treasurer, Democratic Executive Committee, Escambia County, Pensacola, Florida:

.....

To the extent that this office is qualified to answer the question as presented, it would appear that it was the intent of the legislature that such question should be answered in the affirmative.

March 4, 1950—050-105.

SECRETARY OF STATE—CANDIDATES—DISPOSITION OF PARTY
ASSESSMENTS—COUNTY EXECUTIVE
COMMITTEE—POWER

QUESTION: Is the Secretary of State authorized to remit to the county party executive committee the party assessment paid to him by candidates in the 1950 primaries who qualified with him for the following offices: (1) state senate in senatorial districts composed of one county; (2) circuit judge in judicial circuits composed of one county; (3) judge of the court of record in and for Escambia County; (4) judge of the criminal court of record of Broward County; (5) solicitor of the court of record of Escambia County; and (6) solicitor of the criminal court of record of Broward County?

To: Honorable R. A. Gray, Secretary of State:

.....

(1) The party committee assessments paid to the Secretary of State by candidates for the offices of judge and solicitor of the court of record of Escambia County shall be remitted by the Secretary of State to the clerk of the circuit court of Escambia County.

(2) As to all other of such offices, the party committee assessment paid to the Secretary of State by a candidate shall be remitted by that officer to the party executive committee making the assessment.

March 4, 1950—050-106.

PRIMARY ELECTIONS 1950—REGISTRATION BOOKS—CLOSING
TIME—CHAPTER 25334, ACTS 1949, SECTION 102.17
F. S. '41—JEFFERSON COUNTY

QUESTION: In view of the provisions of Chapter 25334, Laws of 1949, and of amended Section 102.17, Florida Statutes, when do the registration books in Jefferson County close prior to the 1950 primaries?

To: *Honorable Ed Ritter, Jr., Supervisor of Registration, Jefferson County, Monticello, Florida:*

.....

The registration books in Jefferson County shall be closed "for a thirty day period immediately preceding" the date of the first 1950 primary election; and until the beginning of such thirty-day period, voters otherwise qualified should be permitted to register.

March 7, 1950—050-114.

ELECTIONS—PARTY COMMITTEE MEMBERS—ELIGIBLE
CANDIDATES

QUESTIONS: (1) Must the names of those persons who are candidates for the offices of committeemen and committeewomen of the several party executive committees (state, congressional, and county) be printed on the ballot used at the second 1950 regular primary election?

(2) Should a blank line be provided on such ballot immediately beneath the name or names of candidates for each of said party offices to permit the voting for a "write-in" candidate?

(3) Where no candidate has qualified for any such office, should there be provided on the ballot a blank line beneath such office to permit the voting for a "write-in" candidate for such office?

To: *Honorable George J. Dykes, Clerk Circuit Court, Lake County, Tavares, Florida:*

(1) The members of the several party executive committees (committeemen and committeewomen) shall be elected at the second 1950 primary election; and names of candidates for such party offices shall be printed on the ballot to be used at such election (Section 102.07, Florida Statutes, and Section 102.72, Florida Statutes, as amended by Chapter 25235, Laws of 1949).

..... there is no provision of law for a vote for a "write-in" candidate for one of these offices. Hence, it is that questions 2 and 3 are answered in the negative; that is to say, no blank lines shall be provided on the ballot for "write-in" candidates for these party offices.

March 9, 1950—050-116.

ELECTIONS 1950—PINELLAS UTILITY BOARD MEMBERS—JUVENILE JUDGE—NOMINATION CANDIDATES—MUST
QUALIFY—PINELLAS COUNTY

QUESTIONS: 1. Should candidates qualify for nomination in the

1950 primaries for any of the offices of member of Pinellas Utility Board of the County of Pinellas, State of Florida?

2. Should candidates qualify for the office of Juvenile Judge of Pinellas County in the 1950 primaries?

To: *Honorable John C. Blocker, County Attorney, Pinellas County, St. Petersburg, Florida:*

.....

(1) At the 1950 general election in Pinellas County, successors should be elected to fill all offices on this board as follows: As to board members Boyer, Dickson and Baynard to take office in July 1951 at the expiration of such named members' four-year term; as to board member Smith, to fill out any unexpired term of four years which began on the expiration date of such member's two-year term in July, 1949; and as to board member Clark, to fill out the unexpired four-year term which began to run at the expiration of board member Pogue's two-year term in July, 1949. Hence, it is proper that candidates of political parties qualify for nomination for these offices in the 1950 primaries.

(Note: On March 8, 1950, Frank Smith was appointed to succeed himself until the first Tuesday after the first Monday in January, 1951. No commission has yet issued. This in no way affects the above conclusions).

(2) By virtue of the aforesaid Section 5 of Resolution No. 2 of the State Democratic Executive Committee adopted with respect to the 1950 primaries, properly candidates may qualify for nomination for the office of Judge of the Juvenile Court of Pinellas County, in the 1950 primaries.

March 20, 1950—050-135.

COUNTY COMMISSIONERS—REGISTRATION BOOKS—EXAMINATION BY CLOSING TIME—PRIMARIES 1950—SECTION
102.17, F. S. '41—DIXIE COUNTY

QUESTIONS: 1. What duty rests upon the county commissioners with respect to examination and revision of primary registration books in a county which has not adopted permanent registration system provided by Chapter 97, Florida Statutes, and in which all registrations are controlled by the general registration laws of this state?

2. In such a county, when do the primary registration books close prior to the 1950 primaries?

To: *Mrs. Jessie Williams, Supervisor of Registration, Dixie County, Cross City, Florida:*

The request for opinion definitely states that this county has not adopted the permanent registration system provided by Chapter 97, Florida Statutes. It is here assumed that registrations in said county are not controlled by local or population act; and this opinion is conditioned on such assumption.

(1) Section 98.40, Florida Statutes, was not changed or affected at the 1949 sessions of the legislature. The section is a part of Chapter 98, Florida Statutes, which deals with the qualification and registra-

tion of voters for general elections. Section 98.40 provides that the county commissioners of each county, on the first Wednesday after the registration books are closed, as provided for in said chapter, in every year in which there is a general election, shall examine and revise the registration books of the county, erasing therefrom names of all registrants who have died, or removed from the county, or from one district to another, or who are otherwise disqualified to vote, and restoring such names as may have been improperly taken off by the supervisor of registration. The remainder of the section, relevant here, provides the notice to be given of such action and procedure to be followed as to those names improperly removed.

As stated above, such provision deals with the general election registration books. However, Section 102.55, Florida Statutes, provides in effect, that primary elections required by Chapter 102 shall be held and conducted in accordance with the provisions of Chapters 98 and 99, Florida Statutes, subject to an exception not here relevant. Thus, on the first Wednesday after the primary registration books are closed prior to the 1950 primaries, the county commissioners shall examine and revise such books in the same manner and following the same procedure in relation to the primary election as specified by Section 98.40 to be followed in relation to the general registration books and general election, as above stated. Such appears to be the law governing this duty of the board of county commissioners.

.....

(2)..... It will be noted that Section 102.17 provides that the primary registration books shall be closed for a thirty-day period immediately preceding the general primary election. These words are construed to mean that the books are required to be closed for thirty clear days immediately prior to such election. Following this rule, it thus appears that the last day for registration for the 1950 primaries is April 1, 1950, after which date such books shall remain closed until five days after the second 1950 primary election.

March 25, 1950—050-151.

CANDIDATES—FILING FEE—WITHDRAWAL OF NAME—REFUND

QUESTION: When a candidate who qualified for nomination for office in the 1950 Primaries, withdraws his name as such candidate, properly may there be returned to him the filing fee paid in connection with such candidacy, upon his request therefor?

To: *Honorable R. A. Gray, Secretary of State, Tallahassee, Florida:*

.....

The possible exceptions referred to above are mentioned. My immediate predecessor in office held that even though the deadline for qualifying for the office involved had passed, filing fees properly may be returned, (1) if the candidate is forced to withdraw from his candidacy because of physical disability prior to the printing of the primary ballots (AGR 1943-44, page 153); and (2) if the candidate dies prior to the primary (AGR 1947-48, page 91). While return of filing fees may be warranted in such instances, in the absence of an actual case involving one or the other of these situations, I prefer at this time to withhold my opinion concerning them.

March 30, 1950—050-159.

FEDERAL EMPLOYEES—WASHINGTON, D. C.—REGISTERED
VOTERS—TRANSFER TO PERMANENT REGISTRATION
LIST—SECTION 102.14, F. S. '41—BAY COUNTY

QUESTION: The officials of Bay County, in pursuance of Chapter 23846, Laws of 1947, installed the permanent registration system provided thereby. Is a resident of Bay County, employed by the federal government in Washington, D. C., who was a duly registered elector prior to the installation of such permanent system, but who has not registered since its installation, entitled to have his name transferred to the present registration list upon fully complying with the provisions of Section 102.14, Florida Statutes?

To: *Honorable J. B. Mashburn, Supervisor of Registration, Bay County, Panama City, Florida:*

.....
..... the question is answered in the negative.

April 8, 1950—050-183.

DEMOCRATIC EXECUTIVE COMMITTEE—SPECIAL PRIMARY
ELECTION—VACANCY IN TAX COLLECTOR'S OFFICE—
ORANGE COUNTY—SECTION 102.48, FLORIDA
STATUTES

QUESTIONS: 1. Recently the office of tax collector of Orange County was rendered vacant by death of the incumbent, elected and commissioned for the four-year term beginning in January, 1949. May the Orange County democratic executive committee under the provisions of Section 102.48, call a special primary to nominate a party candidate to run in the 1950 general election for the unexpired portion of the term of office involved, setting a date for such special primary for May 23, 1950 (date of second regular 1950 primary) and if a second primary is necessary, fixing the date for same within ten days thereafter?

2. What notice is required to be given of the holding of such special primary?

To: *Mrs. Frank Cullen, Chairman, Democratic Executive Committee, Orange County, Orlando, Florida:*

.....
(1) This question is answered in the affirmative.....
.....

(2) As stated above, due notice of the holding of such special primary or primaries should be given. This would seem to be a matter in the sound discretion of the county executive committee or committees involved. It is suggested that in the absence of statutory provisions, notice of the holding of such special primary published weekly in a newspaper of general circulation in Orange County between the date of the adoption of the resolution and the holding of the special primary would appear to be adequate. Any resolution providing for the holding of the special primary should, among other things, prescribe the character of notice to be given.

April 11, 1950—050-184

SEE: OPINION NO. 050-114

**ELECTIONS—COUNTY EXECUTIVE COMMITTEE—MEMBERS—
NO AUTHORITY TO ELECT—FIRST PRIMARY—FRANK-
LIN COUNTY—CHAPTER 25235, ACTS 1949 APPLICABLE**

QUESTION: Properly may the names of candidates for the party offices of members of the county executive committee of a political party be placed on the ballot and voted for in the first 1950 general primary if it appears certain that no second 1950 primary will be necessary with respect to nomination of party candidates for public offices?

To: *Honorable W. P. Dodd, Clerk Circuit Court, Franklin County, Apalachicola, Florida:*

.....

..... the question is answered in the negative.

April 27, 1950—050-220.

**COUNTY DEMOCRATIC EXECUTIVE COMMITTEE—DUTY—STATE
REPRESENTATIVE—VACANCY—CANDIDATE—SPECIAL
PRIMARY—PINELLAS COUNTY**

STATEMENT AND QUESTIONS:

The unopposed democratic candidate for nomination in the 1950 primaries for one of the offices of state representative from Pinellas County died on April 24, 1950.

(1) Does a "vacancy in nomination" as contemplated by Section 102.48, Florida Statutes, exist as result of the death of such candidate?

(2) If a special primary, under Section 102.48, is required to be called for nomination of a candidate for said office, does that duty devolve upon the state or Pinellas County Democratic Executive Committee?

(3) If that duty devolves upon the Pinellas County Democratic Executive Committee, may such special primary be called for May 23, 1950 (same date as second general 1950 primary), to be conducted by the district election officials appointed for conducting the general primary?

(4) If a second special primary is required, in relation to the first special primary, when should it be held?

To: *Honorable William B. Tippetts, Chairman, Democratic Executive Committee, Pinellas County:*

.....

(1)..... Thus this question is answered in the affirmative.

(2)..... it is my conclusion that in pursuance of Section 102.48, the duty devolves upon the Pinellas County Democratic Executive Committee (not the state democratic executive committee) to call the special primary required to fill this vacancy in nomination.

(3) It will be observed from the provisions of Section 102.48 that in calling this special primary election the county executive committee

should also fix a date for a second primary if such should become necessary. I know of no reason why the first special primary may not be held on May 23, 1950 (same date as second general 1950 primary) and be conducted by the same election district officials appointed for and conducting the general primary on that date....

.....

(4) Under Section 102.48, the second primary, if same is required, "shall be held within ten days" after the first special primary.

April 28, 1950—050-221.

**ELECTORS—CHALLENGED VOTER—PARTY AFFILIATION
CHANGES—CHAPTER 26154, ACTS 1949—PINELLAS
COUNTY**

QUESTIONS: 1. In view of the provisions of Section 9, Chapter 24994, Laws of Florida, Special Session of 1948, may a voter in the 1950 primary who has been challenged in the manner provided by Section 102.42, Florida Statutes, and who in the 1948 general election voted for all candidates of his party other than his party's candidates for the office of presidential and vice-presidential elector, be permitted to vote if he executes the affidavit prescribed by said section, modified by him to the extent of evidencing that he voted for all candidates of his party in the 1948 general election other than such candidates for the office of presidential and vice-presidential elector, and otherwise meets the requirements of this section?

2. In Pinellas County, if subsequent to the 1948 general election and prior to the 1950 primaries, an elector effected a change of his party affiliation in pursuance of the provisions of Chapter 26154, Special Laws of Florida, Acts of 1949, and is challenged when he presents himself to vote in the 1950 primaries in the manner provided by Section 102.42, Florida Statutes, in order to qualify himself to vote, is it necessary that he execute the affidavit in the identical form set forth in said section?

3. Under our election laws, what officers, if any, properly may issue instructions to the appointed officials of election boards concerning their legal duties in conducting the 1950 primary in their respective election districts?

To: Honorable William B. Tippetts, Chairman, Democratic Executive Committee, Pinellas County:

.....

(1)..... this question is answered in the affirmative.

(2) Chapter 26154, Special Laws of Florida, Acts of 1949, provides in part that any qualified elector in Pinellas County may change his party affiliation at any time prior to thirty days before any primary election in the manner set forth in Section 1 of such act. The wording of this section is slightly at variance with the general law on this subject found in Section 102.11, Florida Statutes. Nevertheless, assuming Chapter 26154 to be valid, it controls with respect to this subject in Pinellas County. If such a person who has so changed his party affiliation since the 1948 general election presents himself for voting for candidates of the party to which he has changed his affiliation in the 1950 primary and is challenged in the manner set forth in

Section 102.42, he will be considered to have complied with the affidavit requirement of said section if he executes such affidavit modified to the extent of striking therefrom the words "and at the last general election I did not vote for any nominee of any other party."

(3) (There is excepted from the effects of this answer instructions of election officials concerning the use of voting machines, as contemplated by certain provisions of Chapter 100, Florida Statutes.)

.....

Members of the election board in each precinct are charged with the responsibility of conducting the election according to law. Any instructions issued to them by either the supervisor of registration or the board of county commissioners should be confined to the following: (a) For the convenience of such election officials designating various sections of the law pertaining to their several duties, avoiding any attempt to construe such law. (b) Should the supervisor of registration or the board of county commissioners consider that any opinion of this office construing any of such laws may be of assistance to such election officials, copies thereof or the effect of the same may be given such officials. (c) If our courts have construed any of such laws, such rulings or the effect thereof may be delivered the election officials.

On the other hand, an election board functioning as such may request advice concerning their duties from the county commissioners, supervisor of registration, county attorney or anyone else. It is the province of such election officials to accept or reject any such advice so given them, solicited or unsolicited, it being of course assumed that according to their best judgment they shall conduct the election according to law.

June 6, 1950—050-273.

**PRIMARY ELECTIONS—BALLOT BOXES—PERIOD SEALED—REQUIREMENTS—SECTION 102.44, FLORIDA STATUTES
APPLICABLE**

QUESTION: How long must the contents of a primary election ballot box remain sealed in such box before the box may be emptied and the contents destroyed?

To: Honorable John L. Hall, Supervisor of Registration, Hendry County, LaBelle, Florida:

.....

Ballot boxes used at a primary election with their contents shall remained sealed until after the next succeeding general election. When the boxes are opened at the expiration of such period, the poll lists, ballot stubs with electors' signatures thereon, oaths of inspectors and clerks, envelopes containing rejected absent voters' ballot, envelopes from which have been removed absent voters' ballots determined to be legal, and certificates of election results as contemplated by Section 102.44—these should be preserved for two years immediately succeeding the day of the primary election. Ballots voted, spoiled or not used, and ballot stubs not containing signatures of electors removed from a box at the expiration of the time the box is required to be kept sealed may be destroyed when so removed.

June 6, 1950—050-275.

PRIMARY ELECTIONS—BALLOTS—CROSS MARK (X) MANDATORY—SECTION 102.39, FLORIDA STATUTES

QUESTION: When an elector in the primary election indicates on the official ballot his choice of a candidate by a check mark instead of a cross mark (X), does such constitute a valid vote for a candidate by the elector?

To: *Mrs. J. P. Blakeslee, Supervisor of Registration, Martin County, Stuart, Florida:*

..... the above question is answered in the negative.

June 10, 1950—050-282—050-291.

STATE PARTY EXECUTIVE COMMITTEE MEMBERS—EVIDENCE OF ELECTION—CHAPTER 102, FLORIDA STATUTES APPLICABLE

QUESTION: Is a certificate of "nomination" as distinguished from a certificate of "election", issued (1) by a clerk of the circuit court to a candidate without opposition for member of a state executive committee of a political party who by the terms of Section 102.34, Florida Statutes, 1949, is declared elected to such party position or (2) by a supervisor of registration to a person (opposed for the office) elected member of the state executive committee of a political party at the second primary election, sufficient to evidence that a person issued such a certificate has been duly elected as a member of such state executive committee?

To: *Honorable R. A. Gray, Secretary of State:*

..... the question is answered in the affirmative.

June 15, 1950—050-291—050-282.

SEE: OPINION NUMBER 050-282

CLERKS CIRCUIT COURTS—DUTIES—STATE PARTY COMMITTEE MEMBERS—ELECTIONS—EVIDENCE OF APPOINTMENTS

QUESTION: "Please advise me what authority if any clerk circuit court certifies the nomination of election of any party candidate or committee member or if there is any responsibility of the clerk to issue a certificate of appointment to any member of party executive committee when appointed in accordance with law"?

To: *Honorable R. A. Gray, Secretary of State:*

On June 10 I sent to you an opinion, No. 050-282, in which I answered the first question asked by the circuit clerk. I said in that opinion that where a person who has qualified for a party office is not opposed the statute declares him elected to the party position and that in the absence of other statutory provisions the clerk of the circuit court is the proper officer to issue to such person so elected without opposition a certificate evidencing such person's election.

Answering the clerk's second question, the statutes do not appear to provide for issuance by a clerk of certificate of appointment to a

member of a party executive committee. However, it is my opinion that if an appointment has been filed with a clerk it would be lawful for that clerk to certify to anyone interested that there has been filed in his office a document executed by a named person, and such person's title, if any purporting to appoint a named person as a member of a named executive committee.

June 22, 1950—050-302.

GENERAL ELECTION BALLOT—INDEPENDENT CANDIDATES—
NAMES PRINTED ON—NO PROVISION UNDER
SECTION 102.02, FLORIDA STATUTES

QUESTION: Under the election laws of this state is there any method provided whereby a person who is not a member of a political party, as defined in Section 102.02, Florida Statutes, 1949, may have his name printed on the general election ballot as an independent candidate for public office?

To: *Honorable John C. Blocker, County Attorney, Pinellas County, St. Petersburg, Florida:*

.....

In view of the foregoing, in my opinion the question is answered in the negative. It therefore follows that the only way in which a vote may be cast for an independent candidate is by "write-in" vote on the general election ballot for such a candidate.

June 28, 1950—050-321—050-183—050-220.

DEMOCRATIC EXECUTIVE COMMITTEE—DUTIES—SPECIAL PRIMARY ELECTIONS—SECTION 102.48, FLORIDA
STATUTES—VOLUSIA COUNTY

STATEMENT AND QUESTION: On April 19, 1950, the Justice of the Peace of the 4th Justice District of Volusia County, who had been elected for the term expiring in January, 1953, died. On May 29, 1950, Governor Warren appointed a successor to fill the vacancy in this office until the first Tuesday after the first Monday of January next after the election and qualification of his successor. On June 16, 1950, the Volusia County Democratic Committee, in meeting assembled, "tabled indefinitely a Motion presented to call a Special Election to nominate a candidate to be voted on" in the 1950 general election for the unexpired portion of the term of office involved.

(1) Under the facts above stated is it mandatory or discretionary for the Volusia County Democratic Executive Committee to call a special primary election to provide for a party nominee for such office of Justice of the Peace, 4th District, Volusia County, Florida, to stand for election in the 1950 election?

(2) If such executive committee for any reason does not call a special primary election for the purpose stated, may it meet less than thirty days before the 1950 general election or at any prior time and select a nominee for such office to be voted for at said general election?

To: *Honorable Murray Sams, State Attorney, DeLand, Florida:*

.....

..... It is to be noted that if, as to a county office, such vacancy

occurs thirty or more days prior to the general election, the county party committee "shall call a primary election, etc."; but that if the vacancy occurs less than thirty days before the general election such committee "shall fill such vacancy in nomination by selecting a nominee" for the office involved.

.....

(1) There appears to exist under the factual situation set forth in this question a vacancy in office as contemplated by the last paragraph of Section 102.48. The wording of this paragraph with respect to selection of political party nominees to be voted for in the ensuing general election is to be construed as mandatory and not discretionary.

(2) Under Section 102.48, a county party executive committee can nominate a party candidate only if the vacancy in nomination occurs less than thirty days before a general election. Hence, this question is answered in the negative.

June 29, 1950—050-323.

COUNTY DEMOCRATIC EXECUTIVE COMMITTEE MEMBER—
REGISTRATION QUALIFICATION—VACANCY—SECTION
102.07, FLORIDA STATUTES

QUESTIONS: 1. Where a person who was not a registered voter, qualified in the 1950 primaries for the office of member of his county party executive committee, and thereafter, on March 28, 1950, became a registered voter in such county and at the second primary election in 1950 was elected to said party office, is such person entitled to be certified as elected to said party office in view of the fact that he was not a registered elector at the time he qualified for such office?

2. If the answer to the above question is in the negative, what is the proper method for filling this party office?

To: *Honorable Roland X. Droit, Supervisor of Registration, Highlands County, Sebring, Florida:*

.....

(1) Conditioned as aforesaid, it appears that there should not be withheld from this candidate for party office a certificate of election thereto on the ground that he was not a registered elector of his party at the time he qualified for this office.

(2) In the event a vacancy should occur from any cause on a county party executive committee, the chairman of the state party executive committee is granted the power to fill such a vacancy by appointment from among the members of the party residing in the election district where such vacancy occurs (Section 102.07, Florida Statutes, 1949).

June 5, 1950—050-328.

SUPERVISOR OF REGISTRATION—ASSISTANTS—COMPENSA-
TION—CHAPTER 25453, LAWS 1949—CHAPTERS 98, 102,
FLORIDA STATUTES—BREVARD COUNTY

QUESTION: Lawfully may the board of county commissioners of Brevard County pay a bill presented by the Supervisor of Registration of said county for the services of persons employed by him in his

office to assist him in registering electors in Precinct No. 2 of said county and the remainder of the county, such registration of electors being in pursuance of Chapter 25453, Laws of Florida, Acts of 1949?

To: *Honorable Noah B. Butt, Attorney, Board of County Commissioners, Brevard County:*

.....
..... in my opinion the above question properly is answered as follows:

There appears to be no authority in the general law or in Chapter 25453 for the board of county commissioners to pay the compensation of assistants or deputies employed by the supervisor. However, it is suggested that if the board shall determine that the persons employed by the supervisor of registration were necessary and essential in the discharge of the duties of his office by the supervisor, in fixing the compensation of the supervisor under Section 98.17, the obligation of the supervisor to pay for the service of such assistants should be taken into account. Whether or not the employment by the supervisor of such assistants was necessary, and the question of their reasonable compensation, are matters to be determined by the board.

Note: This opinion amended by opinion No. 050-346.

July 20, 1950—050-346—050-328.

SUPERVISORS OF REGISTRATION—ASSISTANTS—COMPENSATION—AMENDING OPINION NO. 050-328

QUESTION: Lawfully may the Board of County Commissioners of Brevard County pay a bill presented by the Supervisor of Registration of said county for the services of persons employed by him in his office to assist him in registering electors in Precinct No. 2 of said county and the remainder of the county, such registration of electors being in pursuance of Chapter 25453, Laws of Florida, Acts of 1949?

To: *Honorable Noah B. Butt, Attorney, Board of County Commissioners, Brevard County:*

.....
Subsequent to delivery of opinion 050-328, Chapter 25567, Laws of Florida, Acts of 1949, was called to our attention. This act provides in substance that the supervisor of registration of all counties in the State of Florida having a population of not less than 19,250 and not more than 21,000, according to the last state census, shall receive an annual salary of \$1800, "payable in twelve equal installments on the first of each month" by the Board of county commissioners from the general fund of any such county. The act was effective July 1, 1949. Brevard County falls within the population bracket described in the act. Whether such act is constitutional is not within the province of this office to determine under the circumstances here found; and for the purpose of this opinion, the act is assumed to be valid.

So conditioned, it thus appears that the compensation of the supervisor of Brevard County is fixed not by the general law (Section 98.17, Florida Statutes, 1949) but by the above population act.

..... It is remarked that at common law a *public* officer, in the absence of statutory authority may appoint deputies to discharge

purely ministerial duties (*Willingham vs. State*, 21 Fla. 761). The general rule seems to be that deputies for whom the law fixes no compensation must be paid by the officer employing them, and not out of the public treasury (*State vs. Montaya*, 20 N. M. 104, 146 P. 956; 46 C.J. Section 383, pages 1062, 1063).

Since it appears that the compensation of the supervisor of registration of Brevard County is fixed at \$1800 a year by Chapter 25567, in the light of the provisions of Section 102.20 and the general rule stated above concerning compensation of deputies, the question is answered in the negative.

Former opinion 050-328 is amended to the extent that the conclusions therein are at variance with this opinion.

August 3, 1950—050-374.

SPECIAL PRIMARY—OFFICE OF CIRCUIT JUDGE—QUALIFICATION OF CANDIDATES

QUESTION: In the forthcoming special primary to be held for the purpose of selecting a party nominee for the office of Circuit Judge of Duval County, Florida, should persons desiring to run as candidates in said primary qualify with the Clerk of the Circuit Court of Duval County or with the Secretary of State?

To: *Honorable W. D. Barfield, Circuit Judge, Duval County, Jacksonville, Florida:*

.....

The resolution of a party executive committee providing for the holding of a special primary election for the purpose set forth in the question should require, in effect, that candidates in said primary qualify with the Secretary of State by a given time and date; and that within such time persons desiring to qualify as such candidates shall file their candidate's oath (Section 102.29) with, and pay their filing fee (Section 102.31) to the Secretary of State, and also, if a party committee assessment has been levied (Section 102.27), pay the amount thereof to, or file receipt showing payment of same with, the Secretary of State.

It is remarked that according to precedent heretofore observed by the Secretary of State, any such committee assessment so paid to him will be delivered by him to the appropriate county executive committee.

September 22, 1950—050-452.

COUNTY EXECUTIVE COMMITTEE—MEMBERSHIP VACANCY— MILITARY SERVICE—SECTION 102.07, FLORIDA STATUTES APPLICABLE

QUESTIONS: 1. Would induction into military service of a member of a county party executive committee automatically create a vacancy in the party office held by the member at the time on induction?

2. Properly may such a party committee member inducted into military service issue a proxy to another party member to function

on the committee for the inducted member during his absence in military service?

3. In case there is no election or appointment to fill the office of member of such county executive committee, may the incumbent whose term has expired continue in such party office until the vacancy is filled?

To: *Mr. John A. Scruggs, Chairman, Democratic Executive Committee, Leon County, Tallahassee, Florida:*

.....

(1) Induction into military service of a member of a party committee, of itself, reasonably will not create a vacancy in such member's party office. However, such a committee has power by resolution or by-law, duly adopted, to declare that absence of a member in military service for a lengthy or indefinite period of time and under such circumstances as the committee may provide, shall create a vacancy in such party office to be filled as set forth in Section 102.07.

(2) The power granted executive committees in Section 102.07 that, "Proxies may be allowed by executive committees", is not to be construed as permitting a member absent in military service for a protracted or indefinite period of time to substitute in his place and stead as a member of the committee, another person to function under a general power of attorney or proxy during the member's absence.

(3) Public officers hold over beyond the expiration of their terms and function until their successors are duly qualified under the authority of Article XVI, Section 14, Florida Constitution. In the absence of specific statutory authority, extreme doubt exists that a member of a county democratic executive committee holds over and functions after the expiration of his official term until a successor has been elected or appointed. To remove all doubt, where a vacancy exists in the membership of such committee by reason of the fact that no person has been elected or appointed, such should be filled by the chairman of the state executive committee without delay in the manner set forth in Section 102.07.

November 17, 1950—050-529.

**REGISTRATION RECORDS—CHANGE OF PARTY AFFILIATION—
C. 24216, ACTS 1947; §102.11, F.S.—BROWARD COUNTY**

QUESTION: What is required on the part of the Supervisor of Registration and an elector to accomplish change of party affiliation of such elector on the registration records of Broward County?

To: *Mrs. Easter L. Gates, Supervisor of Registration, Broward County, Ft. Lauderdale, Florida:*

The registration of electors in Broward County is controlled by the provisions of Chapter 24216, Laws of 1947. Section 8 of the Act provides that when a person registers, there shall be delivered to such elector a certificate of registration. Section 13 of the Act provides that any person who, having registered under the Act, shall desire to change his party affiliation, "may have such change recorded upon his official registration cards by filing his written request therefor with the Supervisor of Registration at least thirty (30) days before the date of any

State or County primary election"; that upon receipt of such written request, "the Supervisor of Registration shall note the change of party affiliation upon all pertinent registration records and shall furnish to the person filing such request a certificate to such effect. All such written requests shall be retained on file in the office of the Supervisor of Registration." The general law on the subject (Section 102.11, Florida Statutes, 1949) provides for change of party affiliation, at the times therein specified, upon the registrant "making application in writing, duly signed by the appellant, to the Supervisor of Registration." It is apparent that in neither Section 13, Chapter 24216, nor Section 102.11, is there the specific requirement that the elector shall personally present himself to the supervisor of registration; nevertheless, the wording of said Section 13, and responsibilities of the supervisor involved, require the exercise of care and the observance of reasonable requirements, within the wording of the law, on the part of the supervisor.

Under the provisions of Section 13, Chapter 24216, that a registrant in Broward County desiring to change his party affiliation, may have such change made "by filing his written request" with the supervisor of registration, such officer may require that said written request be delivered to her either in person by the registrant or by mail direct from the registrant. Since there is required issuance of the new certificate set forth in said Section 13, at the time the request for change of party affiliation is filed, the certificate of registration theretofore issued the registrant should be delivered by him to the supervisor prior to issuance to the registrant of the new certificate. In the event such original certificate has been lost, the supervisor of registration should exact such reasonable proof of loss from the registrant as she may consider sufficient as a prerequisite to issuance of a new certificate as required by said Section 13. Of course, in any event, such written requests must be filed with the Supervisor of Registration at least thirty days before the date of any state or county primary election, and must be retained on file in the Supervisor's office.

BOND ELECTIONS

February 10, 1949—049-51.

SPECIAL TAX SCHOOL DISTRICT BOND ELECTION—ORANGE COUNTY—FREEHOLDERS, OTHERWISE QUALIFIED PERMITTED TO REGISTER FIVE DAYS BEFORE BOARD ELECTION

QUESTION: In the event of a special tax school district bond election in Orange County, is it the duty of the Supervisor of Registration to register electors who are freeholders and otherwise qualified to vote in such election up to five days prior to the date of the holding of the bond election, as provided by Section 103.05, Florida Statutes, 1941, in view of the provisions of Section 3, Chapter 24232, Laws of Florida, Acts of 1947?

To: Miss Pearl S. Yancey, Supervisor of Registration, Orange County, Orlando, Florida:

.....

..... the question is answered in the affirmative. It is remarked,

however, that should any part of the period during which such registrations are permitted for a bond election fall within a period when otherwise, under Chapter 24232, such books are closed prior to another election, the registration records should evidence that the registrations for the bond election during such period when otherwise the books are closed are special registrations for such bond election only.

February 23, 1949—049-73.

SCHOOL BOND ELECTION—PINELLAS COUNTY—FREEHOLDERS
—STATUS—INFORMATION BY MAIL—CERTIFIED
LIST QUALIFIED TO VOTE

QUESTION: There is to be a school bond election in Pinellas County on April 5, 1949. The Supervisor of Registration has mailed to those registrants in said county who appear on the registration records to be freeholders a business reply card (no postage required of registrant) for use of registrant to indicate by check mark whether the registrant owns real estate in said county. Questions concerning said cards are as follows: (1) In the event such a registrant returns the card without indicating thereon whether he now owns real property in said county, under Section 3, Chapter 24214, Laws of Florida, Acts of 1947, will the supervisor be authorized to change the registrant's record to indicate he is not a freeholder? (2) If such registrant returns the card clearly indicating that he owns real property in Pinellas County, will this be sufficient proof to the supervisor that he is a freeholder?

To: *Honorable Warren A. Wright, Supervisor of Registration, Clearwater, Pinellas County, Florida:*

.....

(1) A returned card which clearly indicates that the registrant is a freeholder in the county is reasonable grounds for the supervisor to consider the registrant's status as such, unless, upon consideration of the registrant's qualifications, the supervisor has reason to believe otherwise. (2) If the registrant's returned card clearly indicates he is not now a freeholder in the county, his name should not be included in the certified list. (3) Cards returned by registrants which do not indicate their status as freeholders, and failure of registrants to return cards, should not alone be accepted as reasons for not including their names in the certified list. In such event, the status of said registrants is a matter to be determined by the supervisor in pursuance of the investigation required by Section 103.06.

March 2, 1949—049-80.

FREEHOLDERS—DEFINITION—QUALIFICATIONS TO VOTE

QUESTION: Are persons who are not freeholders but pay personal property taxes qualified to vote in a bond election?

To: *Mrs. Dove C. Falls, Supervisor of Registration, Pasco County, Dade City, Florida:*

.....

..... the question is answered in the negative.

March 15, 1949—049-102.

SCHOOL BOND ELECTION—SUPERVISORS OF REGISTRATION—
FREEHOLDERS—CLOSING REGISTRATION BOOKS—
PROOF OF RIGHT TO VOTE TO ELECTION BOARD

QUESTIONS: 1. In view of the provisions of Chapter 24214, Laws of Florida, Acts of 1947, and of Sections 103.03-103.05, Florida Statutes, 1941, properly may the Supervisor of Registration close the registration books thirty days before the day on which a school bond election shall be held?

2. If, on the day a school bond election is held, the registration records shall not evidence that an elector, otherwise qualified, is a freeholder, should an election board permit such elector to vote upon presentation to the board of an affidavit that he is a freeholder?

To: *Honorable Floyd T. Christian, Superintendent of Public Instruction, Clearwater, Pinellas County, Florida:*

.....

(1) The registration books of Pinellas County shall remain open up to five days prior to the date said school bond election will be held, to permit freeholder electors in said county to register so they may be eligible to vote in such election.

(2) (a) Only those names appearing on said certified list contemplated by Section 103.06 as originally prepared by the supervisor and as corrected by him between the closing of the registration books and the bond election should be permitted to vote in said election.

March 11, 1949—049-105.

SCHOOL BOND ELECTION BROWARD COUNTY—STATUS OF
ELECTOR AS FREEHOLDER—CHANGING AFTER REG-
ISTRATION BOOKS CLOSE

QUESTION: Within the near future, a school bond election is to be held in Broward County. (1) Will it be legal for an elector to change his status as a freeholder after the books are closed thirty days before election? (2) May an elector present proof that he is a freeholder to the election board on the day of election?

To: *Mrs. Easter L. Gates, Supervisor of Registration, Broward County, Fort Lauderdale, Florida:*

.....

..... in my opinion the above questions are answered in their numbered order as follows:

(1) After the Broward County registration books are closed for this school bond election as provided in Section 11 of Chapter 24216, such records may not be changed with respect to the freeholder status of any elector therein registered.

(2) Unless the registration books of Broward County at the time the election is held evidence that an elector is a freeholder, such elector is not qualified to vote in said election. Hence this question is answered in the negative.

The questions here presented were essentially dealt with by my predecessor in an opinion of this office No. 048-313, which former opinion is in harmony with the statements and findings found herein.

(Note: This opinion modified by 049-124).

March 21, 1949—049-118.

**SCHOOL BOND ELECTION—PINELLAS COUNTY—MUNICIPAL
ELECTION, ST. PETERSBURG— REGISTRATION
BOOKS—TIME FOR CLOSING**

QUESTION: On April 5, 1949, there is to be a school bond election in Pinellas County. On May 3, 1949, there is to be a municipal election in St. Petersburg. In view of the provisions of Chapter 24214, Laws of Florida, Acts of 1947, should the registration books close for said municipal election five days before such bond election or thirty days before said municipal election?

To: Honorable Warren A. Wright, Supervisor of Registration, Clearwater, Pinellas County, Florida:

.....

..... in my opinion the above question is answered as follows:

The registration books of Pinellas County shall close five days before the school bond election only in so far as such election is concerned. The registration books shall close thirty days before the municipal election in so far as that election is concerned. This should occasion no confusion in the preparation and correction of the certified list of those qualified to vote in the bond election, to be prepared and subject to correction in the manner set forth in detail in our aforesaid opinion 049-102.

March 11, 1949—049-124.

**SCHOOL BOND ELECTION—BROWARD COUNTY—STATUS OF
ELECTOR AS FREEHOLDER—CHANGING AFTER REGIS-
TRATION BOOKS CLOSE—MODIFICATION OF
OPINION 049-105**

QUESTIONS: Within the near future, a school bond election is to be held in Broward County.

(1) Will it be legal for an elector to change his status as a freeholder after the books are closed thirty days before the election?

2. May an elector present proof that he is a freeholder to the election board on the day of election?

To: Mrs. Easter L. Gates, Supervisor of Registration, Broward County, Ft. Lauderdale, Florida:

The above numbered opinion is the one directed to you by us and dated March 11, 1949. Subsequent to the preparation of that opinion, similar questions involving a school bond election to be held soon in Pinellas County were considered by us and as a result of our conclusions therein it becomes necessary that we amend the answers to the questions set forth in above opinion 049-105.

.....

In the light of said opinion 049-102, the answers to the questions set forth in opinion 049-105 are amended to read:

(1) Only those qualified electors who were not freeholders when the books closed and who became freeholders between the closing of the books and the day of the bond election, and those who have ceased to be freeholders during such period properly may have their freeholder status changed upon the registration records during such period.

(2) an elector may not present proof that he is a freeholder to the election board on election day and vote. If he became a freeholder between the closing of the registration books and election day, he should appear before the supervisor and obtain a correction of his registration record to show he is a freeholder and thereupon it would be the duty of the supervisor to correct said list to include such person's name. . . .

Except as to the modified answers above set forth, opinion 049-105 remains unchanged.

March 29, 1949—049-147.

SCHOOL BOND ELECTION—NASSAU COUNTY—QUALIFICATIONS
—REQUIREMENTS

QUESTIONS: (1) The registration of electors in Nassau County is governed by the general law. A school bond election is to be held in said county. Is it possible for there to be a special opening of the registration books in said county to permit the registration of electors who are freeholders, to vote in said election and, if so, for what period should they remain open?

(2) Is it necessary that the registration books be closed five days prior to such bond election?

(3) Is it necessary that the polling places be opened at each of the fourteen precincts of the county to permit qualified freeholder electors to vote in such election?

(4) How is it determined that the required number of electors have signed a petition for such a bond election?

(5) What majority is necessary to carry such school bond election?

To: Hon. Thomas G. Hall, Attorney, Board of Public Instruction, Nassau County, Fernandina, Florida:

(1) In pursuance of Sections 103.03-103.05, Florida Statutes, 1941, the registration books of Nassau County should be opened in the office of the supervisor of registration for a special registration for this proposed bond election. Those electors whose names appear upon the general registration books as freeholders are not required to register again during such special registration. The books shall remain open from the time the election is called up to five days before the election. . . .

(2) It is the duty of the supervisor to keep such books open "to register freeholders up to five days prior" to said bond election (see *State vs. Special Tax School District No. 6 in Polk County*, 8 So. 2d. 658).

(3) Such bond election shall be held at the regular polling places used at the last general election in Nassau County, *unless the county board shall otherwise order*. . . .

(4) Certificate of the supervisor of the whole number of registered electors in the county and that the signers of the petition, a stated number, are duly qualified electors, should set this question at rest.

(5) A majority of the freeholders who are qualified electors in the district must participate in such election; but a majority of the votes cast in such election is all that is necessary to carry the election.

April 14, 1949—049-157.

HOSPITAL BOND—PASCO COUNTY—FREEHOLDERS—PERCENT-
AGE PARTICIPATING—CANVASSING BOARD—
FINDINGS DOUBTFUL

QUESTION: On March 15, 1949, an election was held in Pasco County for the purpose of determining whether or not county bonds should be issued and a tax levied for the purpose of constructing a new county hospital. No certified list as required by Section 103.06, Florida Statutes, 1941, was furnished by the supervisor of registration for use of election officials at such election; however, the county attorney states it is his information that a complete registration list was furnished such officials on that day. The election returns show that the number of votes cast in said election was less than 50 per cent of the number of registered electors shown to be freeholders on the registration books of the county. It appears that proponents of the movement to issue such bonds propose to circularize, or have circularized, all registered freeholders of the county with a letter and a return card on which the elector is requested to give information concerning his freeholder status on the day of such election. When the return from these inquiries are received, is the supervisor of registration authorized to enter the results of that information on the registration books, and should the results of the information obtained thereby be considered by the board of county commissioners in determining whether or not the required number of freeholder electors participated in said election?

To: *Honorable W. Kenneth Barnes, County Attorney, Pasco County, Dade City, Florida:*

It is assumed that there are no special acts, other than Chapter 20053, Special Acts of 1939, related to the construction of a county hospital by Pasco County, and this opinion is conditioned upon such assumption.

.

. in my opinion the above question is answered as follows:

The supervisor of registration is not authorized to enter in the registration records information concerning freeholder status of registered electors which might be furnished from the return cards sent out by proponents of the bond issue under the circumstances recited above. A registrant's freeholder status is entered on the registration records only in pursuance of his personal appearance before the proper registration officer and the making of the required oath or affidavits (Sections 98.12 and 103.03, Florida Statutes, 1941). In the absence of a law authorizing the circularization of registrants, as noted,

it is difficult to see how such may be relied upon for the purpose for which it is here intended. In view of the apparent irregularities which characterized this election, it is doubtful if the Board, as a canvassing board, can make the findings required by the applicable statutes. Only the courts in a proper proceeding could determine the status and validity of the election with any degree of finality.

April 14, 1949—049-162.

**SCHOOL BOND ELECTION—ABSENT VOTERS—TWO INSPECTORS
AND ONE CLERK—REQUIRED—REPUBLICAN ALLOWED—
§§101.01-101.07, 103.10 F.S.**

QUESTION: There is to be a school bond election on May 10, 1949, in Broward County.

- (1) May absentee ballots be cast in such election?
- (2) Should two inspectors and a clerk or three inspectors and a clerk be appointed to conduct the election?
- (3) Is it necessary that a member of the Republican Party be appointed as an inspector or clerk?
- (4) Is it necessary that all inspectors and clerks be freeholders?

To: Honorable Julian E. Ross, Attorney, Board Public Instruction, Broward County, Ft. Lauderdale, Florida:

1. The method of voting such a ballot before the county judge, provided by Section 101.07 would seem to be applicable to bond elections.

. The specific wording of Section 103.10 authorizes election boards consisting of two inspectors and one clerk, and such are sufficient.

3. the question is answered in the affirmative.

4. It does not appear that they must be freeholders.

September 8, 1949—049-427.

**SCHOOL BOND ELECTION MONROE COUNTY—FREEHOLDERS
REGISTRATION—OPENING REGISTRATION BOOKS—
§§103.03-103.05 F.S.**

QUESTIONS: (1) Should the supervisor of registration of Monroe County open the registration books of said county, in pursuance of Sections 103.03-103.05, Florida Statutes, to permit the registration of freeholder electors to qualify to vote in a special tax school district bond election to be held in said county within the near future?

(2) If the preceding question is answered in the affirmative, when should such books be opened and when closed prior to such election?

To: Honorable John England, Supervisor of Registration, Monroe County, Key West, Florida:

.
(1) This question is answered in the affirmative; that is to say, that the registration books of Monroe County should be opened to permit the registration of freeholder electors, in the manner provided by Sections 103.03-103.05, prior to the special tax school district bond election to be held in that county in the near future.

(2) The books should be kept open, in pursuance of and for the purposes set forth in Sections 103.03-103.05, from the date of the

first publication of notice of such election to five days prior to the date such election is held.

Corrected 050-63

February 7, 1950—050-60.

**DATE OF BOND ELECTIONS—JOINT ELECTIONS—PRIMARY
ELECTIONS—SECTION 103.21, F. S. '41**

QUESTION: Will it be lawful for the Board of Public Instruction of Saint Lucie County to hold a special tax school bond election on the date of the first or second primary election to be held in May, 1950?

To: Honorable Errol S. Willes, Attorney at Law, Fort Pierce, Florida:

Under the provisions of Section 103.21 it would be unlawful for the Board of Public Instruction of Saint Lucie County to hold a school district bond election on the same day that a primary election is held in said county. Hence, the question is answered in the negative.

February 20, 1950—050-79.

**BROWARD COUNTY—SCHOOL DISTRICT BOND ELECTION—REG-
ISTRATION PERIOD—CHAP. 24216, LAWS OF 1947,
SEC. 103.03-103.05, F.S. '41**

QUESTION: The Board of Public Instruction of Broward County, Florida, has called a special tax school district bond election to be held in that county on March 31, 1950. In view of the provisions of Chapter 24216, Laws of 1947, particularly Sections 10 and 11 thereof, must the registration books be closed for a thirty-day period preceding the date of the bond election to those desiring to register in order that they may vote in the 1950 primaries?

To: Mrs. Easter L. Gates, Supervisor of Registration, Broward County:

In my opinion the registration books of Broward County shall be closed at 5:00 o'clock p.m. the thirtieth day prior to the school bond election only in so far as such election is concerned. From the date such books are so closed for said bond election to 5:00 o'clock p. m. of the thirtieth day prior to the date of the first 1950 primary, such books are otherwise open for the registration of electors. This should occasion no confusion with respect to the preparation and correction of the certified list of those qualified to vote in the school bond election, as contemplated by Section 103.06, Florida Statutes.

SUPERVISOR OF REGISTRATION

July 19, 1949—049-333.

**SALARY INCREASE—CHAPTER 25483, ACTS 1949—
SUMTER COUNTY**

QUESTION: Should the salary of supervisor of registration of Sumter county be increased to \$100 per month on the effective date of Chapter 25483, which is June 13, 1949, where no funds for the increase have been budgeted for the fiscal year?

To: Honorable C. Burton Marsh, Clerk Circuit Court, Bushnell, Florida:

..... the supervisor of registration in your county is entitled to the increase in salary as is provided for in the act, regardless of your budget. He is entitled to the new salary from June 13.

CHAPTER VIII

OFFICES, OFFICERS AND PUBLIC RECORDS

COMPENSATION AND ACCOUNTS OF ADMINISTRATIVE OFFICIALS

December 7, 1949—049-576.

TAX ASSESSOR—COMPENSATION FOR SERVICES IN PRIOR YEARS—CHAPTER 24259, ACTS 1947—HAMILTON COUNTY

QUESTION: Would compensation paid to me during the year 1947, for services rendered in 1946, be considered compensation for the year 1947 or the year 1946?

To: *Honorable J. W. Register, Tax Assessor, Jasper, Hamilton County, Florida:*

.

It is my opinion that any compensation which you received during 1947, for services rendered prior to January 1, 1947, should not be considered compensation for the year 1947.

PERSONS ELIGIBLE TO OFFICE; RETIREMENT; EXPENSES

October 19, 1949—049-496.

TAX ASSESSORS—LOCAL CHAMBER COMMERCE—MEMBERSHIP DUES—NOT CHARGEABLE AS OFFICE EXPENSE

QUESTION: Are membership dues in a local Chamber of Commerce a proper charge as an office expense of a county tax assessor?

. the question is answered in the negative.

November 18, 1949—049-548.

MERIT SYSTEM COUNCIL—ALIEN WIFE OF AMERICAN CITIZEN— ENTITLED EMPLOYMENT UNDER MERIT SYSTEM

QUESTION: There is a requirement of the Merit System Council that a person must be a citizen of the United States or have filed first citizenship papers to be eligible for employment under the Merit System. Is the alien wife of an American citizen, who has not filed her declaration of intention to become a citizen but who will be eligible for American citizenship next July, entitled to qualify for employment under the Merit System?

To: *Mr. Angus Laird, Merit System Supervisor, Florida Merit System, Tallahassee, Florida:*

. Your question is answered in the affirmative.

You are reminded that Section 112.02 of the statutes requires that all persons employed to work for the State shall be bona fide residents of the State for two years prior to the employment except only where after due diligence no person can be found in the State possessing the required qualifications necessary to the particular employment.

February 22, 1950—050-82

**HOSPITAL PLAN FOR GROUP—STATE PAYMENT OF PREMIUMS—
SEC. 112.08-112.14 F.S. '41, CHAP. 25189, LAWS OF 1949**

QUESTION: May the Board of Control participate in a group insurance plan insuring the lives, health, etc., of faculty members and employees of the institutions under its management by paying a part of the premium?

To: Board of Control:

.....
..... your Board may arrange for group insurance, but the premiums must be paid with funds of the persons insured, and not with funds of your Board or institutions under your management. The Board could cooperate in such plan by deducting each insured person's premium from his salary.

March 16, 1950—050-129.

**SCHOOL BOARD MEMBER ELIGIBLE TO SERVE AS STATE
EMPLOYEE**

QUESTION: May a person lawfully be an employee of the State of Florida and fill the office of county school board member at the same time?

To: Honorable Fuller Warren, Governor of Florida:

..... the question is answered in the affirmative. However, this person should ascertain if the holding of such office will be agreeable to, or not conflict with any rules or regulations of, the state officer or department employing him.

April 20, 1950—050-207.

**FLORIDA MERIT SYSTEM—EMPLOYMENT—QUALIFIED RESI-
DENTS PRIORITY OVER NONRESIDENTS—PROVISIONAL
APPOINTMENTS ALLOWED—SECTION 112.02
FLORIDA STATUTES**

QUESTION: Where, under the Florida Merit System, a nonresident's name appears upon an employment list, while that of a fully qualified resident of the State of Florida does not so appear, may the resident be given a provisional appointment in view of Section 112.02, Florida Statutes, 1941?

To: Mr. Angus Laird, Merit System Supervisor:

.....
In my opinion, the question is to be answered in the affirmative.

VACATING OFFICE

June 15, 1949—049-253.

**COUNTY OFFICIALS—DOMICILE—FACTS AND CIRCUMSTANCES
OF PARTICULAR CASES MUST FURNISH ANSWER**

QUESTION: Is a county official "required to live in the county where he serves?"

To: Honorable Fuller Warren, Governor of Florida:

It is assumed that the question involves the "domicile" of a county officer.

When the matter of domicile becomes an issue, the facts and circumstances of the particular case must furnish the answer.

For the foregoing reasons, any answer to the above general question can be of little value in the absence of detailed facts and circumstances with respect to the office and person involved.

LEAVES OF ABSENCE

August 4, 1950—050-382.

MILITARY LEAVE OF ABSENCE—EMPLOYEES OF BOARD OF CONTROL AND INSTITUTIONS—SECTIONS 115.08 TO 115.15 FLORIDA STATUTES

QUESTION: Do the provisions of Chapter 20718, Laws of 1941, apply to employees of the Board of Control or institutions under its supervision who are in the active Reserve and are called into active service, or who volunteer for active military service, in the present emergency in which the United States is engaged in military operations with the United Nations against aggressors in Korea?

To: Board of Control, Tallahassee, Florida:

It is my opinion that all the provisions of Chapter 20718, Laws of 1941, Section 115.03-115.15, inclusive, apply to active military service in the present emergency, and that your question requires an affirmative answer.

September 14, 1950—050-441—050-382.

STATE LEGISLATURE—MEMBERS—LEAVES OF ABSENCE—MILITARY SERVICE—SECTIONS 115.08-115.15 FLORIDA STATUTES

QUESTION: What will be the legal status of members of the state legislature who may be called to "active military service," within the meaning and intent of such quoted words as they are used and contemplated in Sections 115.08-115.15, Florida Statutes, 1949?

To: Honorable Ralph Turlington, Representative Nominee, Gainesville, Alachua County, Florida:

These sections of Florida Statutes, 1949, were originally Chapter 20718, as amended by Chapter 20863, Laws of Florida, Acts of 1941. In a recent opinion of this office, No. 050-382, it was held that these statutory provisions apply to active military service in the present emergency.

As used in these statutes, "active military service" is defined (Section 115.08) as meaning "active duty in the Florida defense force or federal service in training or on active duty with any branch of the army of the United States, the United States navy, the marine corps of the United States, the coast guard of the United States,

and service of all officers of the United States public health service detailed by proper authority for duty with the army or navy, and shall include the period during which a person in military service is absent from duty on account of sickness, wounds, leave or other lawful cause."

Section 115.09 provides, in effect and in part, that all state and county officers in this state, and all those who hold office under the government, and who are officers or enlisted men either in the Florida defense force, the national guard, the naval militia, marine corps, unorganized militia, or army, navy, marine or coast guard reserve, or officers or enlisted men in any other class of the militia, may, subject to the provisions of these statutes, be granted leave of absence from their respective offices to perform active military service. As related to the officers described in the question such a leave of absence may be granted or denied by the Governor in his discretion, as the public interested may require (Section 115.10). When any such leave of absence is granted, the further provisions of these mentioned sections set forth privileges and rights of the recipient thereof.

In Advisory opinions to the Governor, reported in 8 So. 2d. 26 and 9 So. 2d. 172, our Supreme Court stated that the purpose of the legislation here described was to secure to officers their tenure in office if called into war service; that absence with leave does not ipso facto create a vacancy in office; that the Governor has the constitutional power to appoint a proper person to perform duties of a *ministerial, administrative or judicial officer*, who is not subject to impeachment, when the incumbent is absent in military service after having been granted leave of absence.

Under Section 115.10 it thus appears that it lies within the power of the Governor to grant leave of absence to a member of the legislature called to "active military service." But it does not lie in the power of the Governor to appoint any person to perform the duties of such a *legislative officer* during the latter's absence in military service. Hence, when such a leave is granted and such an officer is in active military service during a legislative session, his office may not be declared vacant by the Governor even though the absence of such officer may result in his constituents not having representation at such session.

It is to be observed that the advisory opinions above and comments are promised upon such an officer being absent in "active military service" after having obtained such mentioned leave from the Governor. The above question may properly contemplate instances where the officer absent in service has not requested leave or has requested and been refused such leave. It is a constitutional requirement that a public officer shall give personal attention to his office and that the Governor shall take care that the laws be faithfully enforced (Article XVI, Section 17, and Article IV, Section 7, Florida Constitution). Whether absence without leave in active military service of such a legislative officer during a legislative session would constitute such an abandonment of office as to warrant the Governor calling a special primary and/or election to fill same (Sections 102.73, 98.08-98.10 and 98.43, Florida Statutes, 1949) is a question to be determined by the Governor if and when it may arise. In absence of a request from the

Governor concerning this matter no attempt should be made by this office to answer it.

The above would seem to constitute as definite an answer to the question as the circumstances permit.

October 6, 1950—050-478.

LEAVES OF ABSENCE—PERMANENT STATE EMPLOYEES—ELIGIBILITY—SECTIONS 115.14, 250.48, FLORIDA STATUTES APPLICABLE

QUESTIONS: 1. Are state employees who have received seventeen days leave of absence with pay for National Guard Service, as provided by Section 250.48, Florida Statutes, eligible to receive an additional thirty days leave of absence with pay by virtue of Sections 115.09 and 115.14, Florida Statutes, when and if inducted into active military service?

2. Are daily, hourly or weekly laborers "employees" of the State of Florida, within the meaning of Sections 250.48 and 115.14, Florida Statutes?

To: Honorable Alfred A. McKethan, Chairman, State Road Department:

.....
 Your first question is therefore answered in the affirmative.

Therefore, it would appear that daily, hourly, or weekly laborers might well be eligible for the benefits authorized by Sections 250.48 and 115.14, provided that their positions are of a permanent, regular nature, and not temporary and casual, as explained above. Your second question is answered accordingly.

October 9, 1950—050-482—050-382—050-441.

COUNTY COMMISSIONER—MILITARY LEAVE OF ABSENCE TO—SECTIONS 115.08-115.15, FLORIDA STATUTES 1949

QUESTION: What will be the legal status of a member of a Board of County Commissioners whose term of office expires the first Tuesday after the first Monday in January, 1953, who has been called to "active military service" within the meaning and intent of such quoted words as they are used and contemplated in Sections 115.08-115.15, Florida Statutes, 1949?

To: Honorable Ransom R. Tilton, County Commissioner, Martin County, Stuart, Florida:

.....
 Attached hereto are copies of former opinions of this office numbered 050-382 and 050-441.

In view of the discussion of Sections 115.08-115.15, Florida Statutes, 1949, as set forth in these former opinions, and the effect of such statutes, in my opinion the above question properly is answered as follows:

Under Section 115.10 the above county commissioner may make application to the Governor for military leave of absence during the

period of time he may be retained in active military service within the contemplation of these sections mentioned. It lies within the discretion of the Governor to refuse or grant such application for leave of absence. Should the Governor grant such leave of absence, then he is empowered to appoint a person as acting member of the Board of County Commissioners to serve in the place and stead of this county commissioner called to active duty during the period of such active military duty but not beyond the date of the expiration of the term to which such commissioner called to duty was elected.

Should this county commissioner not be granted military leave of absence or should he not apply for the same and enter into active military service, whether such would create a vacancy in office which might be filled by appointment by the Governor is a question which this office should not attempt to answer unless it is presented by the Governor in connection with his duties should such a situation arise.

Should this county commissioner see fit to resign at this time because of this call to active military service, the Governor would be authorized to appoint a successor for the short period terminating the first Tuesday after the first Monday of January, 1951, a successor to be elected at the 1950 general election for the period of the unexpired term beginning the first Tuesday after the first Monday in January, 1951.

POWERS AND DUTIES OF OFFICERS

June 7, 1949—049-247.

COUNTY OFFICERS—REQUIRED TO MAKE—REPORT—TO STATE COMPTROLLER—FEES—COMMISSIONS COLLECTED— NO COMPENSATION ALLOWED

QUESTIONS: 1. Are county officers required to make the reports, described in Section 116.03, Florida Statutes, to the state comptroller entitled to compensation for the preparation and furnishing of such reports?

2. Where the county commissioners have allowed, approved and paid such officers for such reports in the past is there any liability on the part of such county commissioners or officers and their bondsmen for the repayment of such amounts?

To: *Honorable Bryan Willis, State Auditor:*

..... This answers the first question in the negative.

The officers in question being without right to compensation for the making of the said report to the state comptroller, the board of county commissioners were without any authority to provide for or allow the payment thereof.....the second question is not decided.

.....

January 6, 1950—050-5.

STATE BEVERAGE DEPARTMENT—PURCHASE OF AUTOMOBILES —STATE BUDGET COMMISSION—CENTRAL PUR- CHASING—SEC. 116.12 AND 116.16-20, F. S.

QUESTIONS: 1. May the State Beverage Department purchase motor vehicles at its own discretion and without approval of the State Budget Commission for such purchase?

2. What control, if any, has the State Budget Commission, either directly or indirectly, over the purchase of motor vehicles by the several state officers, boards, commissions, and other agencies?

3. Does the executive order of January 10, 1949, (Book D-12, page 141), providing a central purchasing agency for "all state agencies under the direction of the Executive Branch of the State government," in so far as it extends to the purchase of automobiles, have any application to the purchase of motor vehicles?

To: The Budget Commission:

.....

..... It would seem to be within the authority of the State Budget Commission to ascertain and determine whether or not there has been any allotment made or budget approved under which the motor vehicles in question may be purchased if there is any uncertainty or doubt on this point. The State Budget Commission, although it has no direct authority to require that motor vehicles be purchased with its consent, may indirectly control such purchases in connection with the approval of the annual budgets and work programs and the making of the allotments upon which the State Comptroller pays the bills. This seems to be sufficient answer to the first and second questions.

.....

Although the power or authority of the Governor to set up a state or central purchasing department for the executive department may be uncertain, this point need not be decided as the Governor, through the exercise of a governmental prerogative accorded him by Section 24, Article IV, of the State Constitution, may indirectly enforce central purchasing of automobiles by the agencies under the direction of the executive department by the withholding of his signature on warrants for the payment of automobiles purchased otherwise than in accordance with his said order. These observations indicate a conditional affirmative answer to the third question above. In so far as the action of the Budget Commission is concerned it is doubted that the commission is bound by the order.

Reading Sections 116.12, 116.17-116.20, and the above executive order, in the light of Chapter 320, Florida Statutes, it appears that the term motor vehicles and similar terms are intended to extend to and embrace vehicles as are subject to registration under said Chapter 320, Florida Statutes, unless a contrary intention clearly appears from the context of the law.

February 14, 1950—050-80.

NEPOTISM—SCHOOL BOARD MEMBER RELATIVE—BUS DRIVER
SEC. 116.10 F.S. '41

QUESTIONS: 1. Does Section 116.10, Florida Statutes, 1941, apply to school board members?

2. If so, may the wife of a school board chairman legally transport children in her car for a monthly stipend paid her from county school funds and may the son-in-law of the same school board chairman legally drive a school bus and receive remuneration from county school funds?

To: Hon. Thomas D. Bailey, Superintendent, Department of Education:

.....

In my opinion, Section 116.10 does apply to school board members and your first question is answered in the affirmative.

The wife and son-in-law of a school board member, in my opinion, come within the degree of relationship contemplated by Section 116.10. Your second question is therefore answered in the negative.

October 24, 1950—050-501—050-80.

COUNTY COMMISSIONERS, BOARD OF—HIRING RELATIVES—
NEPOTISM PROHIBITED—§116.10, FLORIDA STATUTES

QUESTIONS: 1. Will you please advise me whether or not an employee of the county, who is a relative to one member of the board of county commissioners within the fourth degree comes under Section 116.10, Florida Statutes, when such employee is hired by the board as a whole or by a county road superintendent.

2. Please also advise me whether a relative in such degree of each of the members may be employed by the board as a whole under the section that provides "that the provisions of this section shall not apply to the officers above who employ only one person related to them as above set out." This question might also be worded as follows: May five county employees be each related within the fourth degree to a member of the board of county commissioners when no two of said employees are related to the same commissioner.

3. Is a school bus driver covered by Section 116.10, Florida Statutes?

To: Honorable William D. Hopkins, State Attorney, Tallahassee, Florida:

In my opinion, Section 116.10, Florida Statutes, is intended to cover all employees who may be hired by the officer or board in question and who work under the supervision or direction of such board or officer. The fact that the actual appointment was made by the board as a whole rather than by one member of the board acting as a whole rather than by one member of the board acting independently of the others is immaterial. Your question is therefore answered in the affirmative, and in my opinion such an employee would come within the meaning of Section 116.10, Florida Statutes.

Your second question may best be answered as follows: I do not think Section 116.10 intended to prevent the hiring of more than one employee by a board who might be related to different individual members of the board. I think it intended that each individual member of the board should have the right to hire one relative but no more. It follows that if an employee is related (within the degree provided in the act) to two board members, he would be the only relative either of the board members would be permitted to hire. If, however, no two of said employees are related to the same commissioner as set forth in your question, your question must be answered in the affirmative and such action would not be prohibited by Section 116.10, Florida Statutes.

Your third question is answered in the affirmative.

NOTARIES PUBLIC

January 21, 1949—049-24.

ELIGIBILITY—MARRIED MINOR FEMALE—OTHER MINORS

QUESTIONS: May a married female under 21 years of age properly be appointed to the office of notary public in this state?

May persons less than 21 years old whose disabilities of non-age have been removed properly be appointed to the office of notary public in this state?

To: Honorable Fuller Warren, Governor of Florida, Tallahassee, Florida:

.....

..... in my opinion the above questions are answered in their numbered order as follows:

(1) My immediate predecessor in office held (see opinion No. 048-361, dated December 16, 1948) in effect that if a female minor is over the age of 18 years and is married, and produces proof of such facts, she is eligible for appointment to the office of notary public. Without holding that such a person under 18 years is not eligible for said appointment, I suggest that since only minors who have reached the age of 18 may in judicial proceedings be emancipated, ordinary caution suggests that the Governor consider such in the exercise of his discretion and that he assume the position of not appointing a person emancipated by marriage and less than 18 years of age to this office.

(2) Male and female minors whose disabilities of nonage have been removed in judicial proceedings are eligible for appointment to the office of notary public. It is mentioned that this holding is in line with the position assumed by my immediate predecessor in office (see A.G.R. 1943-1944, page 173).

January 29, 1949—049-33.

APPOINTMENT—LEGAL RESIDENCE REQUIREMENT

QUESTION: Is it necessary for a person to be a resident of Florida for one year before he may be appointed to the Office of Notary Public?

To: Honorable Fuller Warren, Governor of Florida, Tallahassee, Florida:

There appears to be nothing in our Constitution and Statutes related to the Office of Notary Public concerning residence qualifications for appointment to such office. It is my opinion that a person who has established his legal residence and domicile in Florida is eligible for appointment to the office, even though he has not resided in this State for the period of one year.

March 8, 1949—049-91.

APPOINTMENT—LEGAL RESIDENCE REQUIREMENTS

QUESTION: A person operates a hotel in Florida, spending approximately seven and one-half months each year here, and during the summer months operates a hotel in the north. This has been the

situation for the past three years, and this person's future plans include residence in Florida for the same period each year. Applications for appointment to the office of Notary Public, as prepared, appear to require a showing of one year's residence in Florida. Is this person, from the standpoint of residence, qualified for appointment to the office of Notary Public?

To: Honorable Fuller Warren, Governor of Florida, Tallahassee, Florida:

In opinion No. 049-33 of this office to the Governor, dated January 29, 1949, it was stated that there appears to be nothing in our constitution and laws related to the office of Notary Public concerning residence qualifications, and that "a person who has established his legal residence and domicile in Florida is eligible for appointment to the office, even though he has not resided in this state for the period of one year."

Therefore, the question here is whether or not this applicant for the office of Notary Public has established his legal residence and domicile in Florida. Furthermore, if more than a year ago he actually determined then that Florida would be his home, his legal residence, and actually moved to this State, as seems evident from the above, and has not changed his place of legal residence since then, the fact that for part of the year he is in another state does not affect his legal residence here; and he could with truth make the statement that he has resided in this State for one year. Whether or not this person has established his home in Florida depends entirely upon the facts and his intent, as indicated above.

December 20, 1949—049-595.

COMMISSION MARRIED WOMAN BY LEGAL MARRIED NAME

QUESTION: Sometime ago a single woman received a commission as notary public, which commission has now expired. She is now married and desires reappointment to the office of notary public, and requests that since she still does business under her maiden name, she wishes such appointment to be made to her in her maiden name. Properly may a commission be issued to her for this office, using her maiden name?

To: Honorable R. A. Gray, Secretary of State:

.....

..... the question is answered in the negative.

February 20, 1950—050-86.

NOTARY PUBLIC BOND—APPROVAL BY CLERK—RESPONSIBILITY OF CLERK—SECTION 117.01, FLORIDA STATUTES 1941

QUESTION: What are the duties of the clerk of the circuit court with respect to his approval of the bond of a notary public, with a surety company as surety thereon, as contemplated by Section 117.01, Florida Statutes, as amended?

To: Honorable Arthur W. Newell, Clerk of the Circuit Court, Orange County:

.....

In connection with approval of such a bond, the clerk of the circuit court should be satisfied concerning the following:

(1) That the bond conforms as to amount, terms and conditions to the requirements of amended Section 117.01; and that it is properly signed by the person who is the applicant for appointment as notary public, as principal, and by the surety company, as surety.

(2) If executed by the surety through an attorney-in-fact, there should be attached to the bond a certified copy of power of attorney executed by the surety company to the person therein appointed such attorney-in-fact. It should appear that under the power of attorney the person therein designated attorney-in-fact has the power to execute the bond for the company. The certificate attached to the copy of power of attorney should be dated not earlier than the date the bond is executed by the attorney-in-fact for the company.

(3) Whether the bond is executed by an attorney-in-fact for or by an officer or officers of the surety company, the execution of the bond by the company shall be issued and countersigned by a "local producing agent" of the surety company "who is a resident of this state, regularly commissioned and licensed herein." (Section 631.15, Florida Statutes). It is not considered that such countersignature is required to make the surety's execution thereof binding and valid; yet this requirement of law should be observed.

(4) The request for opinion, among other things, specifically inquires with respect to the responsibility of the clerk to determine "whether or not the Surety Company is qualified to do business as a Surety Company as shown by the latest list furnished by the Secretary of State," and also with respect to the clerk satisfying "himself as to the validity of the signature of the person who signed it." Aside and apart from the requirement of surety companies complying with certain laws under supervision of the Secretary of State, it is remarked that only those surety companies which have received from the Insurance Commissioner a certificate of authority (Section 626.02, Florida Statutes) or annual renewal thereof (Section 626.07) is authorized to engage in business in this state. In Orange County, no doubt quite a number of these bonds are presented from time to time to the clerk for approval; and practical aspects are to be considered. With the presentation of each bond, it is not thought necessary that the clerk should be required to ascertain from the Insurance Commissioner whether the company executing the bond as surety holds valid certificate of authority or if the resident agent countersigning the surety's execution holds valid license as such agent. In my opinion, when such a bond is presented to the clerk for approval, and the same has been executed by the applicant for appointment as notary public, as principal, and by a surety company, as surety, and has been countersigned by a resident agent of the company, in the absence of some fact or feature which reasonably might raise doubts of that officer, he may assume (1) that all signatures are genuine; (2) that the Surety Company is qualified to engage in business in this state; and (3) that the person countersigning as resident agent of the company holds valid license as such agent.

It is remarked that quite often the person who is attorney-in-fact of a surety company is also resident agent. In such event, such person could sign the bond as attorney-in-fact and sign again as resident agent, or in connection with his execution of the bond as attorney-

in-fact he could add appropriate descriptive words evidencing he is also such resident agent.

PUBLIC RECORDS

June 21, 1950—050-316.

PUBLIC RECORDS—STATE WELFARE WARRANTS—FEDERAL RESTRICTIONS—SECTION 119.01, FLORIDA STATUTES— EXCEPTIONS

QUESTION: Do State warrants of all kinds, including those for welfare payments, when paid by this office, constitute public records as referred to in Section 119.01, Statutes of 1941?

To: *Honorable J. Edwin Larson, State Treasurer:*

.....

It is my opinion that State warrants distributing Social Security funds contain "information concerning applicants and recipients" within the meaning of the Federal statutes and are, therefore, covered by the Federal restriction; and that they are, therefore, excluded from the provisions of Section 119.01 and may be disclosed only to State or Federal agencies which have duties or responsibilities directly connected with the administration of the Social Security program.

October 31, 1950—050-510.

MERIT SYSTEM RECORDS—PUBLIC INSPECTION—§119.01, FLORIDA STATUTES APPLICABLE

QUESTIONS: Do the records of the Florida Merit System, as hereinafter designated and described, constitute public records subject to inspection by citizens of Florida within the meaning of Section 119.01, Florida Statutes, 1949.

1. The permanent register, which lists those persons passing a particular examination, the grades and rank thereon?

2. The current active register, which lists an individual, qualified through competitive examination, according to his grade, rank and availability for a particular position?

3. The monthly post audit of personnel made by the Merit System of the various payrolls of the agencies under the Merit System for conformity with its regulations and applicable state statutes?

4. The certificate furnished to an agency under the Merit System listing persons qualified for appointment to fill a vacancy upon which appears the name of those eligible in the order which they should be considered by the agency for appointment?

5. The personal file folder of an individual taking Merit System examinations which includes the application, confidential inquiries made of employers, references and others?

6. The examination test papers of individuals competing in Merit System examinations?

To: Honorable Angus Laird, Merit System Supervisor:

.....

Applying these principles, definitions, and limitations to the specific cases raised in your letter, it is my opinion that the first two categories of records listed in your question are undoubtedly required to be subject to inspection by the public. That the permanent registration records and current active register are "public records" needs no explanation.

As to the third category such audits do not fall clearly within the limitations or the exceptions to the definition of public records, as explained above, and in my opinion are therefore to be considered within the class of public records which must be opened for inspection.

As to the fourth category, i.e., the certificate listing persons eligible for appointment to particular positions, I understand that these certificates often contain frank and personal comments regarding the potential appointees. It certainly appears that the certificate itself is a public record, made by a public officer in pursuance of his duty, and should be open for inspection.

.....

We come now to the fifth category I would say that the personal file folders of individual employees could be maintained under two separate headings, the first to include general qualifications, employment history, etc., which is, I believe, a public record and should be open to the public, and the second file to contain investigative reports and similar data which would not be available for general inspection as an exception to the rule.

As to the last category, i.e., individual examination test papers, implementation of the Federal standards for effective merit system administration would require recognition of the confidentiality of certain of these records. Specifically, examination questions themselves should not be open to general public inspection since disclosure of the content of the questions to applicants in advance of examinations would defeat the very purpose of such examinations. This restriction is imposed by the federal authorities administering the state Merit System services, and is especially applicable to those questions supplied by the federal agency for use by all states at various times. However, it is generally recognized that a candidate should be entitled to see his own test papers under carefully controlled conditions. Moreover, in order to determine that there was no fraud or irregularity in the grading or other processing of the examinations, it is my opinion that test papers may be examined by others who can show such reasonable basis for desiring to inspect them. This might well include newspaper reporters, members of legislative committees, or other candidates competing in the same test, who, because of their personal interest or in behalf of the public generally, are entitled to be assured that the tests were administered fairly, impartially, and without favoritism or irregularity.

As in the answer to the question concerning the last category of records given above, all of the foregoing opinion is subject to any federal statutes or regulations which may require the keeping of any such records closed from public inspection. I am not aware of any additional restrictions, but the application of Section 119.01, Florida Statutes,

must be limited by the provisions of any federal statutes which would supersede our state laws, insofar as the right of citizens to inspect public records is concerned. See *State ex rel Cummer v. Pace*, 121 Fla. 871, 164 So. 723.

Your question is answered accordingly.

STATE OFFICERS AND EMPLOYEES RETIREMENT SYSTEM

March 23, 1949—049-117.

RETIREMENT—NAVAL STORES INSPECTOR—ENTITLED TO CREDIT FOR AGGREGATE NUMBER YEARS SERVICE

QUESTION: Is a state employee, who was on the effective date of the State Officers and Employees' Retirement Act eligible for the benefits of the act, entitled to credit upon aggregate number of years of service, to the years during which he served as a naval stores inspector under the provisions of Chapter 523, Florida Statutes, 1941?

To: Honorable C. M. Gay, State Comptroller:

.....

The question is accordingly answered affirmatively.

July 29, 1949—049-349.

RETIREMENT—ASSISTANT STATE AUDITOR—IN BUSINESS AS CERTIFIED PUBLIC ACCOUNTANT—SHERIFF AS CLIENT—SECTION 121.14, F. S. '41

QUESTION: May an assistant state auditor retire under the state retirement law and go into business as a certified public accountant and have among his clients various sheriffs who enter into contracts with him for accounting services in connection with the operation of their offices without forfeiting his benefits under the state retirement law?

To: Honorable C. M. Gay, State Comptroller:

.....

Although we are of the opinion that the question should be answered in the affirmative, because employment by counties is not within the state law (1947-8 Biennial Report 135), we are mindful of the possibilities of a different construction being placed upon the statutes from the one placed thereon by us. We are also mindful of the hardships that might come to persons in retirement who might act on an opinion of this office in case we should be in error. For these reasons it is suggested that any persons interested, unless they are willing to hazard the chances of this office being in error, should take legal proceedings, by a proceeding for declaratory judgment or otherwise, to obtain an adjudication of a court of competent jurisdiction upon the question. We answer the question in the affirmative subject to the above observations.

August 25, 1949—049-407.

REFUND TO PARTICIPANT—APPROPRIATION—TRANSFER OF FUNDS—NOT REQUIRED

QUESTION: When a refund is made to a participant in a retirement system under the provisions of Section 121.08 or Section 134.08,

Florida Statutes, 1941, is it required that an amount of money equal to such refund be restored to the intangible tax fund from the respective retirement fund; appropriated under Sections 121.15 and 134.15, Florida Statutes, 1941, as the contribution by the State to the retirement funds?

To: *Honorable C. M. Gay, State Comptroller:*

. The answer to the question is accordingly in the negative.

August 23, 1949—049-410.

HARBORMASTERS—ELIGIBLE TO MEMBERSHIP

QUESTIONS: 1. Are harbormasters appointed and qualified under the provisions of Chapter 314, Florida Statutes 1941, eligible for membership in either the State Officers and Employees Retirement System or the County Officers and Employees Retirement System?

2. If the answer to the foregoing question is affirmative, by what procedure may the amount of monthly contribution to the applicable retirement fund be determined?

To: *Honorable C. M. Gay, State Comptroller:*

Question 1. He is eligible to membership in the State Officers and Employees Retirement System.

Question 2. the Comptroller may require each harbor-master, who is a member of the State Retirement System, whether under its voluntary or compulsory feature, to submit monthly a detailed statement of all fees received, and a statement of all disbursements legally made, together with remittance of five percent of the amount retained by him as compensation for services. If he has paid to any deputy or other employee eligible for membership in the retirement system, any compensation or salary for services performed, he should be required to withhold and remit five percent of all such compensation paid by him to such deputy and employee, for deposit in the retirement fund.

September 10, 1949—049-430.

FLORIDA KEYS AQUEDUCT COMMISSION—EMPLOYEES ELIGIBLE—NOT ELIGIBLE COUNTY RETIREMENT SYSTEM

QUESTIONS: 1. Are employees of Florida Keys Aqueduct Commission qualified to participate in the State Officers and Employees Retirement System?

2. Are employees of Florida Keys Aqueduct Commission qualified to participate in the County Officers and Employees Retirement System?

To: *Mr. Ernest A. Ramsey, Manager, Florida Keys Aqueduct Commission, Key West, Florida:*

. The answer to your first question is accordingly in the affirmative.

Employees of Florida Keys Aqueduct Commission are not, by virtue of such employment alone, entitled to participate in the County Officers and Employees Retirement System.

CHAPTER IX

COUNTY ORGANIZATION, OFFICERS AND REGULATIONS

COMMISSIONERS' DISTRICTS

March 11, 1950—050-125.

COUNTY COMMISSIONERS' DISTRICT—MINIMUM ELECTION DISTRICTS—CHAPTER 124, FLORIDA STATUTES 1941 APPLICABLE—GILCHRIST COUNTY

QUESTIONS: (1) Can the county commissioners of Gilchrist County, upon the recommendation of the supervisor of registration, consolidate the seven election precincts in the county into two election precincts in view of the fact that there must be five county commissioners' districts?

(2) What effect would such a consolidation have with respect to the number of committee members on the county executive committee of a political party?

To: Honorable William O. Clifton, County Attorney, Gilchrist County, Trenton, Florida:

.....
..... properly the county cannot be divided into two election precincts, and for that reason this question is answered in the negative.

(2) In view of the answer in the preceding paragraph, it does not appear necessary to attempt any answer to this question.

COMMISSIONERS—POWERS, DUTIES AND COMPENSATION

February 14, 1949—049-57.

TRADING PROPERTY OVER \$300.00—COMPETITIVE BIDS REQUIRED

QUESTION: "May a Board of County Commissioners trade brick valued at \$2,500.00 to an individual for shell to be used in road building without giving notice by advertisement of the transaction?"

To: Honorable George E. Wickline, Chairman, Board of County Commissioners, Flagler Beach, Florida:

.....
The statute above prevents the purchase or acquisition of any materials of a value of more than three hundred dollars by the Board in any manner except by advertisement and competitive bidding. Consequently the question must be answered in the negative.

February 17, 1949—049-62.

CHAMBER OF COMMERCE—ADVERTISING FUNDS—COUNTY AUTHORIZED TO EXPEND

QUESTION: May Okeechobee County legally provide funds to the Okeechobee county Chamber of Commerce for advertising purposes?

To: Honorable T. W. Conely, Jr., County Judge, Okeechobee County, Okeechobee, Florida:

.....

In my opinion the county commissioners of Okeechobee County are authorized under the acts cited above to make use of the facilities offered by the chamber of commerce of that county in carrying out the purposes of the act and therefore authorized to furnish funds to the chamber of commerce in accomplishing this purpose.

February 22, 1949—049-65.

**HIGHLANDS COUNTY—FISH AND GAME CLUB—CARETAKER'S
SALARY—PAYMENT BY TAX FUNDS ILLEGAL**

QUESTION: Where a Fish and Game Club, which assesses its members nominal dues and is open for membership to any person, is established in Highlands County, Florida, and owns property and buildings which are utilized for the purpose of holding meetings of said club, can the Board of County Commissioners lawfully pay the salary of a caretaker for said buildings, which caretaker's duties consist solely of taking care of said buildings and performing services for the membership of said club at meetings and social functions given by said club?

To: Mr. James W. Moore, County Attorney, Sebring, Florida:

.....

The answer must be in the negative.

March 15, 1949—049-107.

**BRIDGES, EMERGENCY REPLACEMENT—TRANSFER OF FUNDS
PERMITTED**

QUESTION: May monies be transferred from one fund to another in a county budget to replace a bridge as an emergency measure?

To: Honorable M. A. Rosin, 11 N. Polk Avenue, Arcadia, Florida:

.....

Based on the assumption that you desire to transfer funds from one existing fund to another, it is my opinion that the board of county commissioners may do so as provided above.

March 21, 1949—049-114.

**MACHINERY—"RENTAL-PURCHASE" AGREEMENT—COMPETITIVE
BIDDING REQUIRED**

QUESTION: May a board of county commissioners buy machinery under a "rental-purchase" agreement without advertising its purchase for competitive bidding in compliance with Section 125.08, Florida Statutes, 1941.

To: Honorable James W. West, Attorney at Law, Bushnell, Florida:

I concur in the opinion rendered by the Attorney General's office on February 28, 1935 (Biennial Reports 1935-1936, p. 235).....

.....

The question is therefore, answered in the negative.

April 1, 1949—049-149.

**CONSTRUCTION OF SIDEWALKS—MATERIALS IN EXCESS
\$300.00—COMPETITIVE BIDS REQUIRED**

QUESTIONS: 1. Is a County Board of Commissioners authorized to construct sidewalks along a county right of way located in a suburban area?

2. Where materials are to be used on a project to be built with the County convict crew, is it a violation of Section 125.08, Florida Statutes, to order such amounts as are needed daily provided these daily purchases are not in excess of \$300.00? For example, lumber for bridge repairs, ready mixed concrete or cement for culvert pipe.

To: Honorable R. H. Merritt, Attorney, Board of County Commissioners, Escambia County, Pensacola, Florida:

.....

..... The first question must therefore be answered in the affirmative.

..... In such instances the purchase of small quantities of road materials of a value of less than \$300.00 from time to time as needed would be authorized even though the total costs of the road materials might aggregate more than \$300.00 before the project is completed.

If however, the amount to be expended for an item of material for a proposed project can be reasonably ascertained by engineering determination in advance of the work, and if such material is susceptible of delivery and application to the job though purchased in one lot, and the purchase price amounts to more than \$300.00, the county commissioners should carry out the spirit and intent of the statute and advertise for bids.

May 11, 1949—049-204.

**CONTRACTS—"RENTAL-PURCHASE" AGREEMENT—NO TIME
LIMIT**

QUESTION: What is the length of time a "rental purchase" agreement can run, when entered into by a Board of County Commissioners for needed equipment?

To: Mr. Hiram Faver, Clerk and Auditor, Board of County Commissioners, St. Johns County, St. Augustine, Florida:

I know of no legal requirement that a "rental purchase" agreement entered into by a Board of County Commissioners would have to be limited to one year or any specific length of time.....

In my opinion therefore, the Board could enter into an agreement which otherwise conforms to the law, for payment which might run over into the following year's budget and simply include the necessary amount in its next budget.

This opinion does not consider the wisdom of such a procedure, but is based only upon its legal aspects.

May 11, 1949—049-205.

COUNTY PROPERTY—PUBLIC SALE AUTHORIZED—NO PRIVATE SALE

QUESTIONS: 1. Does the Board of County Commissioners of Hillsborough County have authority to sell at private sale the block upon which the present county courthouse is situated?

2. If such sale is accomplished, do they have authority to pay for such services, a real estate commission in the usual amount of 5 percent?

3. If question No. 1 is answered in the negative, and we should pass a special act authorizing the sale, in that event, would they be authorized without special authority, to pay such real estate commission as a cost of sale?

To: *Honorable Neil C. McMullen, Member, House of Representatives, House Chamber, CAPITOL:*

Answering question one, it is my opinion that there is no authority for private sale of this real property, inasmuch as Sections 125.35 and 125.36, Florida Statutes, 1941, Cumulative Supplement, only provides for public sale of real property belonging to the county.

In view of the answer to question one, the answer to question two is in the negative.

With regard to question three, should you pass a special act authorizing a private sale of this property, I believe it would be advisable to provide special authority therein for the county commissioners to pay a real estate broker's commission. This is so because county commissioners can exercise only such powers as are provided by law or necessarily implied therefrom. Power to make a private sale of county property might not of itself necessarily be construed to imply authority to pay a broker's commission.

May 20, 1949—049-225.

FLORIDA STATUTES TO JUSTICES OF THE PEACE—NO AUTHORITY TO SUPPLY

QUESTION: Has the Board of County Commissioners the authority to expend public funds for the purchase of current Florida Statutes for the use of a Justice of the Peace?

To: *Honorable Frank D. Upchurch, Attorney, Board of County Commissioners, St. Johns County, St. Augustine, Florida:*

I am unable to find any statutory authority in the county commissioners for supplying the Florida Statutes and supplement to a justice of peace.

June 15, 1949—049-252.

COMMISSIONERS—HERNANDO COUNTY—NO AUTHORITY PURCHASE FIRE TRUCK FOR LEASE TO CITY

QUESTION: Does the board of county commissioners of Hernando County have the lawful authority to purchase a fire truck for the pur-

pose of leasing it to the city of Brooksville to be operated by said city within and without the city of Brooksville?

To: *Honorable Onan Whitehurst, County Attorney, Brooksville, Florida:*

..... the question is answered in the negative.

June 23, 1949—049-276.

COUNTY ATTORNEYS—CONVICTION FEES—PRESENCE NOT REQUIRED TO COLLECT

QUESTION: Is a county prosecuting attorney legally entitled to conviction fees if he does not actually appear in person during the trial?

To: *Mr. Ralph E. Harbert, Clerk, Board of County Commissioners, Bunnell, Florida:*

Section 125.04 Florida Statutes provides for the compensation of county prosecuting attorneys including fees paid upon conviction. No requirement is set forth which would compel the prosecuting attorney to be present in person at a trial in order to collect his fee.

July 14, 1949—049-324.

FINANCIAL RESPONSIBILITY ACT—COUNTY EMPLOYEES—INSURANCE PUBLIC FUNDS—NOT AUTHORIZED—CHAPTER 25050, ACTS OF 1949

QUESTION: What procedure should the Board follow in complying with the provisions of Chapter 25050, Laws of 1949, and if it is necessary for County employees who operate County vehicles to have insurance, is it permissible for the Board to pay the premiums thereon?

To: *Mr. D. H. Sloan, Jr., Clerk and Auditor, Board of County Commissioners, Bartow, Polk County, Florida:*

The chapter referred to is the so-called Financial Responsibility Act. Section 4 (b) of the act exempts certain operators from the provision for suspension of license, among whom is "the authorized operator of a motor vehicle owned by the United States Government, this State, any political subdivision of this State, or any municipality therein." See Section 4(b) (3). Aside from the exemption, the requirement is personal to the operator and a county could not lawfully pay public funds for a personal obligation of its employees unless specifically authorized by statute so to do.

August 18, 1949—049-390.

EXCHANGE SERVICE ON PRIVATE ROAD FOR CLAY—NO AUTHORITY—MILEAGE OUTSIDE COUNTY LIMITS—AUTHORIZED—HIGHLANDS COUNTY

QUESTIONS: 1. May a board of county commissioners purchase clay by offering in exchange to use county equipment in building and repairing a private road owned by the same person who owns the clay pit?

2. Are county commissioners in Highlands County authorized to be paid mileages for travel on county business, approved by the board, outside the limits of Highlands County?

To: Honorable Keith E. Collyer, Board of County Commissioners, Highlands County, Sebring, Florida:

.....
 In other words even though the exchange contemplated by the county might be beneficial to it from a practical standpoint, I do not see how it could be carried out in such a manner as to comply with the express provisions of the statute. This is, of course, based on the assumption that the clay which would be obtained through the exchange would be valued at more than \$300.00. The first question is therefore answered in the negative.

.....
 Your second question is therefore answered in the affirmative.

August 11, 1949—049-399.

**POOR AND INDIGENT INHABITANTS—POWER TO PRESCRIBE—
 RULES—ADMINISTERING COUNTY ASSISTANCE**

QUESTIONS: Are the counties of the State chargeable with the care and maintenance of the poor and indigent who are:

- (1) Residents of the State of Florida for less than one year?
- (2) Residents of the State of Florida for one year or more, but not residents of the particular county for six months or more?
- (3) Citizens of foreign countries who have resided in the State of Florida for one year or more and in the particular county for six months or more?
- (4) Persons who come to the county for the express purpose of being cared for under climatic conditions which they desire?
- (5) Can the several counties refuse assistance to those who claim to be poor and indigent unless such persons are willing to answer questions concerning residence, citizenship, financial standing and ability of members of family to assist?

To: Honorable Park H. Campbell, Attorney, Board County Commissioners, Miami, Florida:

.....
 It is my opinion that it lies within the power of the County Commissioners to prescribe reasonable rules for the administration of county assistance to the poor and indigent of the county. In these rules, standards could be laid down for determining the question of residence and the need and the extent of assistance to be bestowed within the limit of available funds. These rules should provide for appropriate investigation of applicants and require answers to questions seeking pertinent information. In this manner, it is believed that transients, as well as those who might come into the county not for the purpose of establishing residence but for the purpose of drawing county indigent assistance could be screened out as not being bona fide residents.

Undoubtedly, your rules would provide indigent assistance in accordance to need. This would result in those first certified as the most needy cases eligible for assistance would continue to receive it, unless

their status changed. Possibly your Board would consider it advisable to also make provision for assistance in emergency situations as distinguished from cases requiring regular or continued assistance.

The State Constitution and Statutes have left within the sound discretion of your Board the determination of the manner of administering this duty of providing for the County's indigent. If this discretion is exercised reasonably and impartially, no one can have legal grounds for complaint.

August 31, 1949—049-414.

AD VALOREM TAX MONIES—COMMUNITY CHEST—WELFARE PURPOSES—NO AUTHORITY—HARDEE COUNTY

QUESTION: Does the Board of County Commissioners of Hardee County have authority to pay over to the community chest monies, which have been collected by ad valorem tax for welfare purposes, to be disbursed by the community chest?

To: Honorable Lefferts L. Mabie, Jr., County Attorney, Wauchula, Hardee County, Florida:

..... it is my opinion that your question should be answered in the negative.

September 8, 1949—049-431.

COUNTY COMMISSIONERS—CLAY, SALE OF—AUTHORITY—SECTIONS 125.35, 125.36, FLORIDA STATUTES APPLICABLE

QUESTIONS: 1. Do boards of county commissioners in this state have authority to sell clay from lands owned by the county?

2. When clay from lands owned by a county is sold by the board of county commissioners, in what county fund should the proceeds for such sale be deposited?

To: Honorable John W. Schumacher, Chairman, Board of County Commissioners, Sebring, Florida:

The powers, authority and duties of boards of county commissioners in this state are purely statutory (*Crandon v. Hazlett*, 157 Fla. 574, 26 So. 2d. 638; *Gessner v. Del-Air Corporation*, 154 Fla. 829, 17 So. 2d. 522) and they may exercise only such powers as are expressly conferred on them by statute or that are necessarily implied in order to carry into effect their express powers (*Crandon v. Hazlett*, supra). We find no express statute authorizing the boards of county commissioners to sell clay, sand, gravel, etc., as is conferred upon the trustees of the internal improvement fund by Section 253.45, Florida Statutes. However, Section 125.35, Florida Statutes, authorizes boards of county commissioners "to sell and convey any property, real or personal, belonging to the county, whenever such board shall determine that it is to the best interest of the county to do so." Real property may be sold under said statute only after the giving of two weeks' notice of such sale by publication in some newspaper published in the county.

It appears that the board of county commissioners of a county may, under said Section 125.35, Florida Statutes, sell clay belonging

to the county when they determine that such sale would be to the best interest of the county.....

.....
Unless the lands or property to be sold are held by the county for some specific purposes, such as highway construction, we are of the opinion that the proceeds from such sale should be paid into the general fund of the county. But if the lands were purchased from some other fund for a specific purpose any proceeds of their sale probably should be paid into that fund.

September 22, 1949—049-446.

COUNTY COMMISSIONERS—NO POWER TO EXPEND FUNDS TO
BUILD GRANDSTAND ON SCHOOL PROPERTY
ART. IX, §5, FLA. CONST.

QUESTION: May a Board of County Commissioners expend county funds for the purpose of assisting to build a grandstand or other seating arrangements on an athletic field owned by the county schools and used exclusively for school purposes?

To: *Honorable M. G. Scofield, Attorney at Law, Inverness, Florida:*

.....
I must therefore answer your question in the negative.

September 23, 1949—049-451.

NO AUTHORITY TO GRANT EXCLUSIVE FRANCHISE FOR WATER
DISTRIBUTION SYSTEM—PASCO COUNTY

QUESTIONS: 1. As to whether or not the Board of County Commissioners, without any special act authorizing it, has the authority to grant their exclusive franchise to any corporation or individual for operation of a water distribution system in any specified area.

2. If it has any such authority, is there any limit upon the period of time for which this franchise could be granted?

3. If such a franchise is granted and the service unsatisfactory or the quality of the water is such as does not meet the health requirements of the State Board of Health, does the Board of County Commissioners have a right to revoke such franchise?

To: *Honorable Kenneth Barnes, County Attorney, Dade City, Pasco County, Florida:*

..... Unless there be some local law providing otherwise, the first above question should be answered in the negative.

Since question (1) is answered in the negative, questions (2) and (3) have no import.

September 27, 1949—049-458.

ROADS AND BRIDGES—INSPECTION—MILEAGE ALLOWED—
HIGHLANDS COUNTY—CHAPTER 25351, ACTS '49

QUESTIONS: 1. Under Chapter 21650, Acts of 1943, and Section 125.16, F. S. A., could the county commissioners of Highlands county

collect mileage at the rate of 10¢ per mile for mileage actually traveled within said county necessarily incurred in necessary inspection of roads and bridges of said county as part of their compensation?

2. Under special act of 1949 (Chapter 25351, No. 355) applicable to Highlands county, what is meant by, in section 2, the words "therefore been authorized by said Board"?

a. May county commissioners pay themselves 10¢ per mile for mileage actually traveled in the county while attending to road and bridge inspection under a general resolution generally authorizing all such travel, upon bills presented showing what mileage has been performed?

b. Or is it necessary to set up expected travel at a board meeting prior to making such travel, in detail, before such mileage can be collected?

c. What can be done, if answer to "a" is negative, to take care of emergency inspection work, which cannot be forecast in advance?

To: Honorable Keith E. Collyer, County Attorney, Sebring, Florida:

.....

Your question No. 1 should be answered in the affirmative.

I interpret the phrase "therefore been authorized by said board" to mean that travel on county business by members of the board of county commissioners should be authorized prior to the making of these trips. This will answer your question No. 2.

I am of the opinion that travel necessarily incurred in inspecting roads and bridges may be authorized by a general resolution adopted by the commissioners prior to the making of such trips. To hold that authority to make each particular inspection trip must be obtained prior to making such trip would work an undue hardship and would result in a slowing up in efficiency, particularly in emergencies. However, this privilege should not be abused. This answers your question No. 2a.

Your questions 2b and 2c are answered in 2a.

October 3, 1949—049-468.

AUTHORITY—ACQUIRE AND DISPOSE OF PROPERTY—SOUTH FLORIDA HOSPITAL—HIGHLANDS COUNTY

QUESTIONS: 1. Has the board of county commissioners power to acquire surplus air base lands within or without its borders, said lands to be used as a state hospital site or for recreational purposes?

2. Has the board of county commissioners power to lease buildings acquired and owned by them to private individuals?

3. Has the board of county commissioners power to sell buildings acquired by them to private individuals or governmental agencies?

4. Has the board of county commissioners power to establish a recreation center in another county and rent concessions upon the grounds?

5. If we were able to persuade the legislature to proceed with the South Florida Hospital on the air base property—the state could secure title thereto at 100% discount, I am sure—could we legally sell or dispose of, or secure disposal of the present unimproved site?

To: Honorable Keith E. Collyer, County Attorney, Sebring, Florida:

.....
Question 1. In view of the foregoing statutes, it is my opinion that your Board of County Commissioners may acquire the surplus real property and buildings which are now owned by the United States and were formerly used for the Avon Park Air Force Base, even though all or a part of the same may lie in Polk County.....

Question 2. It is my opinion that your Board of County Commissioners has the power to lease these buildings and other real property acquired by it to private individuals or governmental agencies if it is determined by your Board that they are not needed for any county purpose.....

Question 3. It is my opinion that your Board would have the power to sell buildings acquired by them to private individuals or governmental agencies, pursuant to the provisions of Sections 125.35 to 125.38, inclusive, Florida Statutes, 1941.

Question 4. Section 418.02, Florida Statutes, 1941, provides that a county may acquire lands or buildings beyond the corporate limits of the county for playgrounds, recreation centers, and other recreational purposes. Section 394.33, authorizing donations of lands by Highlands County for the South Florida State Hospital, does not restrict such donations to lands lying in Highlands County. I think you would be justified in following these provisions of law unless and until a court of competent jurisdiction should decide otherwise.

Question 5. With the consent of the Legislature by a future enactment, I believe that you could use this area in Polk County in lieu of the area in Highlands County for the South Florida State Hospital. In such enactment, or pursuant to Sections 125.35 et seq., Florida Statutes, 1941, you could legally sell or dispose of the present unimproved hospital site.

October 17, 1949—049-493.

**EQUALIZATION BOARD—AUTHORITY TO RECONVENE AFTER
ADJOURNMENT—CORRECT ERRORS IN TAX ROLLS**

Question: May a county Board of Equalization reconvene after adjournment for the purpose of correcting serious errors previously made?

To: Honorable M. A. Rosin, Attorney at Law, Arcadia, Florida:

Although there is no specific statutory authority for such action, I am of the opinion that any administrative board, including county Equalization Boards, may reconvene after adjournment to correct manifest serious errors which have been made by the Board itself.
.....

October 18, 1949—049-497.

ROADS AND BRIDGES—INSPECTION—MILEAGE—CHAPTER
21650, ACTS 1943—HIGHLANDS COUNTY

QUESTION: Under Chapter 21650, Acts of 1943, and Section 125.16, F.S.A., could the county commissioners of Highlands county collect mileage at the rate of 10¢ per mile for mileage actually traveled within said county necessarily incurred in necessary inspection of roads and bridges of said county as part of their compensation?

To: *Honorable Keith E. Collyer, County Attorney, Sebring, Florida:*

.....
..... under Chapter 21650 and Section 125.16, the county commissioners of Highlands county were not entitled to collect any sum whatever for mileage necessarily traveled in inspecting roads and bridges of said county.

October 20, 1949—049-500.

GENERAL COUNTY FUND—RENT OR PURCHASE NEW MACHIN-
ERY—SECTIONS 125.01, 125.08, 129.05 APPLICABLE—
DESOTO COUNTY

QUESTIONS: 1. May DeSoto county commissioners use \$3,000 from the maintenance item in the General County Road Fund for the rental or purchase of new machinery?

2. May the board of county commissioners rent a tractor with option to purchase, said lease option to run more than one year?

3. May board of county commissioners apply as part of the rent or purchase price, of new equipment, a used tractor?

To: *Hon. John H. Treadwell, Jr., Attorney for Board of County Commissioners of DeSoto County, Arcadia, Florida:*

As stated in your letter the county proposes to advertise for bids for the sale to the county of a new tractor on a lease purchase arrangement, said advertisement stipulating that a portion of the rental or purchase price will be a used tractor now owned by the county.

From the information given, it is not clear whether an actual transfer of funds from one existing fund to another budgeted item is contemplated. Assuming however, that such is the case, question (1) is answered in the affirmative subject to the provisions of Section 129.05. If the question does not contemplate a transfer of funds to another fund, the question is also answered in the affirmative based on the general powers of the Board to build and repair roads, Section 125.01, since the purchase involved does not appear to be inconsistent with the purpose of the maintenance item in the counties General Road Fund.

Question (2) is answered in the affirmative. (Please refer to Attorney General's opinion dated May 11, 1949, number 049-204).

Question (3) is answered in the affirmative subject to the provisions of Section 125.08, Florida Statutes, which requires advertising and competitive bidding on all purchases in excess of \$300.00.

.....

November 4, 1949—049-536.

CONTRIBUTIONS—COUNTY PUBLICITY—BOY SCOUTS, ETC.—
SARASOTA COUNTY

QUESTION: May the board of county commissioners of Sarasota county lawfully make the following contributions: \$4750 to Sarasota Chamber of Commerce, \$1000 to Venice Chamber of Commerce, \$900 to Englewood Chamber of Commerce, \$250 to Sunny Land Council—Boy Scouts, \$500 to Sarasota Junior Chamber of Commerce, \$500 to Sarasota County Anglers Club, \$3000 to special advertising, \$613.88 to contingency reserve?

To: Messrs. Evans & Glenn, Attorneys, Board of County Commissioners, Sarasota, Florida:

In an opinion, No. 049-414, of August 31, 1949, to another county, I held that county tax money could not lawfully be contributed to charitable organizations such as community chests, etc. That is a correct statement of the general law.

..... opinion, No. 049-414, given to another county and construing the general law, does not apply in so far as Chapter 11182 of 1925 changed the general law as to your county.....

It is my opinion that even under your special act a county contribution to a municipal chamber of commerce cannot be justified by the use of the money for general operating expenses of the chamber of commerce. The money should be used to pay costs of what may be reasonably considered advertising and publicity beneficial to the county..... The Board of county commissioners should control these contributions so as to cause the money to be spent only for legitimate advertising purposes which will be beneficial to the economy of the county as a whole.....

Most of what I have said in regard to contributions to chambers of commerce will apply to the Sarasota County Anglers Club. Your board of county commissioners, under the special act, is given broad authority as to the means and methods of advertising and, if the contribution to the Anglers Club is required to be used for county publicity, it would not be unlawful.

Regardless of the fact that the Boy Scouts is one of our really great organizations, I am unable to see where a contribution by the county to the Boy Scouts could be considered publicity within the authority of the general law or your special act. It is my opinion that such contribution, even under your special act, would be unlawful.

The other two items in your list require no comment.

November 22, 1949—049-555.

COUNTY PROPERTY—PURCHASER—DEFECTIVE TITLE—REIM-
BURSEMENT—NO LEGAL AUTHORITY—CLAY COUNTY

QUESTION: Does the Board of County Commissioners of Clay County have legal authority to reimburse the purchaser of real estate from the county, said property having been acquired by the county

through the foreclosure of county tax certificate, when the purchaser has suffered a loss because of defective title, said deed having been set aside by the courts?

To: *Honorable Thomas J. Rivers, Attorney at Law, Green Cove Springs, Florida:*

..... From the facts related in your letter the purchaser of the property has been refunded the amount which he paid for the property and the court in setting aside the deed allowed \$185.00 for improvements which he had made, but this amount was offset as being the reasonable rental value of the property during its occupancy by the purchaser.

.....
Your question is therefore answered in the negative.

February 7, 1950—050-53.

STATE OFFICER—COUNTY COMMISSIONER—DISTRICT SUPERVISOR—HOLDING TWO OFFICES—§15, ART. 16, FLA. CONST.

QUESTION: May an individual hold the office of County Commissioner and that of Supervisor of a Soil Conservation District at the same time?

To: *Hon. Earl R. Murray, Supervisor, Hendry County Conservation District, LaBelle, Florida:*

.....
..... one individual may not hold the offices of county commissioner and of supervisor of a soil conservation district, at the same time.

December 14, 1949—049-588.

LEVEE OR DIKE—BUILD—MAINTAIN—NO AUTHORITY—
GLADES COUNTY

QUESTION: Whether or not the Board of County Commissioners has the authority to construct and rebuild a levee approximately 3 miles long for the purpose of controlling the flooding of private individuals lands immediately adjacent thereto.

To: *Honorable J. W. Adkins, Chairman, Board of County Commissioners, Glades County, Moore Haven, Florida:*

.....
I am of the opinion that the funds you expect to be available may not be properly used to rebuild and maintain the levee.

January 9, 1950—050-8.

EMPLOYMENT OF COUNTY MANAGER AND ENGINEER—ART 16,
SEC. 15, FLA. CON.—SECTION 125.07, F.S. '41

QUESTIONS: 1. May the Board of County Commissioners of St. Lucie County employ the Chairman of the Board of Public Instruction of the county as county manager and engineer?

2. May the Board of County Commissioners employ a county manager and engineer?

To: Honorable W. C. Baggett, St. Lucie County, Clerk Circuit Court:

..... It is, therefore, my opinion that, in the absence of special legislative authority, the Board of County Commissioners may not employ a county manager, but it is authorized, under general law, to employ a county engineer.

.....

I am of the opinion that the Chairman of the Board of Public Instruction may be employed as county engineer. His employment in the capacity of county manager has been answered above.

January 20, 1950—050-26—049-62—049-536—049-581

SUWANNEE COUNTY—ADVERTISING FUND—AID TO CHAMBER OF COMMERCE—C. 11097, ACTS OF 1925

QUESTION: Is the Board of County Commissioners of Suwannee County authorized to pay over to the Chamber of Commerce (presumably of Suwannee County) all sums collected from a special millage for advertising purposes?

To: Hon. G. Warren Sanchez, County Attorney, Suwannee County, Live Oak, Florida:

.....

..... the Board of County Commissioners is authorized to pay over to the Suwannee Chamber of Commerce all sums collected by virtue of the levy under Chapter 11097, Laws of Florida 1925, provided, the same are used exclusively for publicity of the county. It is the duty of the Board of County Commissioners to maintain supervision over all such funds, and to be satisfied that the tax money is not used for purposes other than county advertising.

February 20, 1950—050-84.

COMPENSATION OF PROSECUTING ATTORNEY—OKEECHOBEE COUNTY—FEE FOR CONVICTION—SECTION 125.04, CHAPTER 25022, ACTS OF 1949, OPINION NO. 039-138

QUESTION: Under Chapter 25022, Laws of Florida, Acts of 1949, is the county prosecuting attorney entitled to a \$5.00 fee for each count in an information to which the defendant enters a plea of guilty to each count, and to a fee of \$15.00 for bond estreature because the information contained three counts?

To: Honorable C. M. Gay, State Comptroller:

.....

..... I concur in Opinion 039-138 by my predecessor in office relating to fees fixed by Section 8280, C. G. L., 1927, in which it was said that "a county prosecuting attorney is entitled only to a \$5.00 fee for conviction of the same person upon more than one count charging in substance the same offense, although it may be charged by the use of different language or by divers means in two or more counts. Of course he would be entitled to a fee of \$5.00 for each

conviction if convictions are obtained for different offenses in more than one case, or upon different counts in the same case, although against the same person."

Therefore, I am of the opinion that a \$5.00 fee should be allowed for each conviction of a defendant on separate counts in an information, provided however, that each count does not charge in substance the same offense.

.....

January 30, 1950—050-43.

ADVERTISEMENT FOR BIDS—RESTRICTION OF SPECIFICATIONS
—SEC. 125.08, F. S. '41

QUESTIONS: 1. May a board of county commissioners, in advertising for bids, under Section 125.08, Florida Statutes, for the purchase of certain road grading equipment, restrict the specifications for such equipment to "chain driven transmission" and "preferably with auxiliary gasoline starting engine," when only one manufacturer produces equipment meeting such specifications?

2. Where a board of county commissioners, in advertising for bids, under Section 125.08, Florida Statutes, for the purchase of certain road grading equipment, restricts the specifications stated in the first question above, may a dealer in equipment which fails to meet such specifications, but which might be used for the same purposes, file a bid for the sale of his equipment so as to bind the county commissioners should his bid be the low bid?

To: Board of County Commissioners, Highlands County:

.....

The mere fact that the specifications in question may have called for equipment with "chain driven transmission" and "preferably with auxiliary gasoline starting engine" does not alone render the specifications void, even if there is only one company regularly manufacturing such equipment, if all the competition was permitted of which the situation allowed and the said specifications were not so cast with the intent of stifling competition and the product was such as is readily obtainable in the open market. However, if "chain driven transmission" and "auxiliary gasoline starting engine" were specified when other types of equipment would have been just as suitable for the work intended and just as convenient for use, the validity of such specifications would be doubtful. If these specifications, along with others, had the clear effect of unduly limiting the field of possible competition, they might be of questionable validity. The first question must be answered by the application of all the facts to the rules of law above set out and it is one which must be answered in the first instance by the board of county commissioners themselves under the rules above stated. If the said board has any doubt of the validity of their specifications, when measured by the above stated rules of law, they should reject all bids and advertise for new bids in which they can eliminate specifications which have the effect of stifling competition. This disposes of the first question.

If the bid submitted by the low bidder, referred to in the second question, did not meet the specifications set forth in the advertise-

ment, but amounted to a substantial departure therefrom, the board would have no right to accept the same. The bids must be upon the same specifications and no bidder has a right to substitute other specifications for those contained in the advertisement. The second question is, therefore, answered in the negative.

May 17, 1950—050-242.

COUNTY PROSECUTING ATTORNEY—COUNTY JUDGE'S COURT
—CASES—INSUFFICIENT EVIDENCE TO CONVICT—
AUTHORITY TO NOLLE PROSSE

QUESTION: Does the Prosecuting Attorney in the County Judge's Court have absolute authority to nolle prosequi cases on which in his or her opinion there is not sufficient evidence to convict?

To: *Honorable Otis Whitehurst, County Prosecuting Attorney, Sebring, Florida:*

At common law, in the absence of a statute on the subject, the matter of entering a nolle prosequi before a jury is impaneled rests entirely within the discretion of the prosecuting officer, without necessity for leave of the court. (22 C.J.S. 707, "Criminal Law," Section 457-c; 14 Am. Jur. 967, "Criminal Law," Section 296).

I find no statute on the subject in Florida. Therefore, in my opinion, the above stated rule is applicable.

I assume that your employment as prosecuting attorney is by the Board of County Commissioners under authority of Section 125.03, Florida Statutes, but I do not think that that affects the applicability of the above stated rule. In my opinion, the right to nolle prosequi cases is an incident to being prosecuting attorney and is not dependent upon whether the incumbent became such by election, appointment, or employment under authorization of Section 125.03.

Although it is the official duty of a prosecuting attorney to prosecute crimes, with the control of cases resting very largely in his hands, subject to the provisions of the Constitution and statutes and the general rules governing trial practice (42 Am. Jur. 247, "Prosecuting Attorneys," Section 16), he is subject to being removed if guilty of misfeasance or malfeasance such as failure to prosecute public offenders whom he is bound, as a matter of duty, to prosecute (42 Am. Jur. 239, "Prosecuting Attorneys," Section 8).

May 20, 1950—050-249.

BOARD OF ADJUSTMENT—ZONING—REHEARINGS—POWERS—
SECTION 7, CHAPTER 24663, ACTS 1947—LEON COUNTY

QUESTION: Does the Board of Adjustment of Leon county, Florida, established by Section 7, Chapter 24663, Laws of Florida, Acts of 1947, have jurisdiction and power to receive, consider and dispose of motions for rehearings concerning its orders and directives made under said statute?

To: *Honorable Leo L. Foster, Chairman, Board of Adjustment, Leon County:*

..... The Board now under consideration being in the nature

of an appellate tribunal doubtless the above rule would apply, although the power of boards of original jurisdiction to grant rehearings is doubted. In the light of these observations, so long as the Board retains jurisdiction over the case it may receive, consider and grant petitions for rehearing and in proper cases alter or amend its former order on such rehearing. The Board might also, on its own motion, reconsider the case and correct any error it may have made. This seems to answer the above question.

By way of observation if the mandate or other directive of the Board has been issued and sent down to the Board from which the appeal was taken it would seem that the appellate board, in the absence of statute or applicable rule, may have lost jurisdiction to receive and consider a petition for a rehearing. (See 3 Am. Jur. 345, Section 796). Whether or not the case has been closed by the appellate board so as to divest it of jurisdiction is largely a matter to be determined by the Board itself.

June 1, 1950—050-262.

COUNTY COMMISSIONERS—ESTABLISHED ROAD—CHAPTERS 125, 343, FLORIDA STATUTES

QUESTION: Can a Board of County Commissioners establish a road for the purpose of giving the public access to a location for pleasure or commercial fishing and condemn private property therefor?

To: *Honorable Keith Collyer, Attorney for the Board of County Commissioners, Highlands County, Sebring, Florida:*

.....
..... I see no reason why the county commissioners, by authority vested in them by Chapter 125, may not establish such roadway, in accordance with the provisions of Chapter 343, if in their opinion said road is for the public welfare.

This opinion is rendered upon the presumption that there is no special or local law which expressly provides otherwise.

August 9, 1950—050-388.

CONTRACTS—COMPETITIVE BIDS—REPAIRS TO EQUIPMENT— SECTION 125.08, FLORIDA STATUTES

QUESTION: One of the heavy road machines used for road repair in Escambia County broke down. The machine can only be serviced by one firm in Montgomery, as they carry parts, etc., for this particular type of machine. The Montgomery firm was contacted and they sent a mechanic to examine the machine. It was impossible to determine the extent of repairs needed until the mechanic had torn the machine down for examination. After the mechanic finished his examination, it was determined that extensive repairs were needed and the parts and labor involved in the repair job would amount to \$2306.23. Do the provisions of Section 125.08 of the statutes apply to this type of contract?

To: *Honorable Philip D. Beall, County Attorney, Escambia County, Pensacola, Florida:*

Section 125.08 of the statutes requires the calling for bids and acceptance of the bid of the lowest responsible bidder for the working

of any road, construction of bridges or buildings or for the purchase of goods, supplies or material for county purposes or use, when the amount to be paid therefor shall exceed \$300.00.

Such statutes have for their purpose the securing of economy, protecting the public from collusive contracts, and preventing favoritism, fraud, extravagance and imprudence in the expenditure of public monies. As a result, they are generally considered mandatory in application and require strict compliance with their terms. Our Supreme Court firmly established this general principle in the cases of *Webster v. Belote*, 103 Fla. 976, 138 So. 721, *Finley Method Company v. Standard Asphalt Company*, 104 Fla. 126, 139 So. 795, and similar cases.

While such statutes are mandatory and require strict adherence wherever possible, two possible exceptions where competitive bidding is not always required may be applicable to the instant case. One of these is where it is positively known that advertisement will not result in competitive bids being received, such as where only one person or one company would be able to perform the work. However, a mere belief of the authorities, albeit in good faith, that no one other than the one to whom the contract is let would be willing to undertake the job, is not sufficient. 43 Am. Jur. 722. The other possible exception is where an emergency arises which demands immediate action and time spent in obtaining competitive bids would seriously injure the public interest. However, such exception is only proper where the circumstances truly justify such urgent action.

In the absence of full knowledge of all the facts and circumstances surrounding the problem, I am unable to state definitely whether or not these exceptions would be applicable to the instant case. Consequently, in attempting to answer your question, I can only say that unless it can be clearly shown that the situation described falls within one of the exceptions to the general rule discussed above, it was the duty of the Board of County Commissioners to follow the procedure established by the statute and obtain bids for the examination of the machine, or for labor and parts for its repair, or both.

Your question is answered accordingly.

August 17, 1950—050-399.

COUNTY COMMISSIONERS—HOME FOR POOR AND INDIGENT
PERSONS—ESTABLISHMENT AUTHORIZED—SECTION
125.01(4), FLORIDA STATUTES

QUESTION: May the board of county commissioners pursuant to Section 125.01(4), Florida Statutes, 1949, operate and maintain a home for the aged and indigent from the fund designated "General Welfare and Hospitalization Fund?"

To: *Rosin and Paderewski, Attorneys at Law, Arcadia, Florida:*

..... my opinion that the question is to be answered in the affirmative.

September 27, 1950—050-461.

COUNTIES—AFFLICTED CHILDREN—AUTHORITY AND DUTY
TO CARE FOR—ARTICLE XIII, 3, CONSTITUTION—
SECTION 125.01 (4), FLORIDA STATUTES

QUESTION: Is Dade County or its Board of County Commissioners required or empowered to provide treatment, care, housing, food or

clothing, whether accomplished through an institution or otherwise, for children mentally affected in any or all of the several degrees, such as spastics, morons, mongoloids, imbeciles, etc., when

- (a) such children are orphans;
- (b) such children have been abandoned;
- (c) such children have parents who are a public charge as poor or indigent;
- (d) such children have parents financially able to care for them in all ways?

Is the length of residence of the child or its parents in the county a factor to be considered?

To: *Honorable Park H. Campbell, County Attorney, Dade County, Miami, Florida:*

.....

In attempting to answer your questions, therefore, I believe that children in each of the categories listed may be properly cared for by a county if the county has the facilities to properly discharge such a responsibility once it is assumed. I do not believe it to be mandatory upon the county commissioners to assume such a responsibility unless in their discretion the county is able to assume the burden. With regard to residence requirements, the Constitution requires five years' residence in Florida before any person shall be entitled to benefits provided therein. There is no specific requirement as to length of residence in a county. In my opinion the only requirement, therefore, would be for the applicant to be a bona fide resident of the county in which he is applying for benefits.

October 9, 1950—050-480.

**COUNTY COMMISSIONERS—AUTHORITY TO PURCHASE MAPS—
SECTIONS 125.08, 193.17, FLORIDA STATUTES APPLICABLE**

QUESTION: Is the Board of County Commissioners empowered to enter into a contract for the purchase of maps, consisting of an aerial survey of Osceola County?

To: *Hon. Lawrence Rogers, County Attorney, Kissimmee, Florida:*

.....

Of course, any contract that may be entered into by the board of county commissioners is subject to the provisions of Section 125.08, Florida Statutes, 1949, so that if the total cost of the maps exceeds three hundred dollars, competitive bids must be invited and received.

This office is advised by the State Auditor's Office that the cost of the maps should be charged to "Cost Account No. 269, Administrative, Supplies and Expenses."

Therefore, as qualified above, in my opinion the question should be answered in the affirmative.

October 30, 1950—050-508, 050-388, 050-394, 050-437.

**COUNTY—PURCHASE OF CLOTHING FOR CONVICTS—SPLITTING
INVOICES NOT TO EXCEED \$300.00—VIOLATION OF
§125.08, FLORIDA STATUTES**

QUESTION: Does a purchase of clothing for the county convicts, amounting to several thousand dollars in total, but ordered and shipped

on a series of purchase orders and invoices, no single one of which exceeds \$300, violate Section 125.08, Florida Statutes?

To: Honorable Langley Bell, Clerk of Circuit Court, Escambia County, Pensacola, Florida:

.....

With reference to competitive bidding statutes in general, I invite your attention to my previous opinions 050-388, 050-394 and 050-437, dated August 9, August 11, and September 8, 1950, respectively, copies of which are enclosed. It may be seen from these opinions, as well as from the court decisions and rules of law cited therein, that competitive bidding statutes are strictly construed, must be rigidly enforced, and no avoidance, evasion or circumvention of the statutes, even though done in good faith or based on well intentioned expediency, can be countenanced.

From an examination of the invoices and other papers submitted with your letter it appears that the purchase in question was made by the county from a single company, but shipped on different dates under different invoice numbers and on separate purchase orders, and the invoices and orders were dated on consecutive days. However, each of the invoices covered a sale of the same general class of goods, i.e., convict clothing, and were ultimately billed to the county on a consolidated statement. Even a cursory inspection of these papers reveals at least prima facie evidence of deliberate splitting of invoices on what logically appears to be a single purchase, for the purpose of bringing each of the individual invoices below the statutory \$300 limitation. In my opinion, regardless of the good faith or honest intent involved in the transaction, such a purchase appear to be an attempted avoidance of the statutes and is neither within the spirit nor the letter of the law.

For the reasons given above, and those contained in the cited prior opinions of this office, it is my opinion that the purchase in question violates Section 125.08, Florida Statutes. Your question is therefore answered in the affirmative.

December 8, 1950—050-551, 050-537.

COUNTY COMMISSIONER'S ROAD DISTRICTS—PURCHASING
MATERIALS—SPLITTING INVOICES—\$125.08,
FLORIDA STATUTES APPLICABLE.

QUESTION: Would the purchase by the Board of County Commissioners of a quantity of identical materials from the same company in the same month, exceeding \$300 in total value, but ordered for individual commissioner's road districts in separate orders, each for less than \$300, violate Section 125.08, Florida Statutes?

To: Honorable C. M. Gay, State Comptroller:

.....

Since your letter did not present an actual set of facts, but was phrased in general terms to describe a more or less hypothetical situation, no direct affirmative or negative answer can be given to your question

December 12, 1950—050-558.

**COUNTY PROSECUTING ATTORNEYS—ESTREATED CASH BONDS
—COMPENSATION SECTION 125.04, FLORIDA
STATUTES APPLICABLE**

QUESTION: Is a county prosecuting attorney who is employed by the board of county commissioners under authority of Section 125.03, F. S., entitled to receive the same compensation when cash bonds are estreated as is provided by Section 34.11 for prosecuting attorneys of county courts?

To: Honorable Z. D. Giles, County Prosecuting Attorney, Leesburg, Florida:

.....

..... in my opinion, the above question is properly answered in the negative.

.....

COUNTY FINANCES; REGULATIONS

June 14, 1949.—049-257.

**FINANCIAL REPORTS, PREPARATION—CLERKS, CIRCUIT COURT
NOT ENTITLED TO COMPENSATION—COUNTY COMMIS-
SIONERS LIABLE FOR FUNDS PAID OUT**

QUESTIONS: 1. Are clerks of the circuit courts who prepare financial reports, for the county commissioners and themselves, under Chapter 128, Florida Statutes 1941, entitled to compensation for the preparation and furnishing of such reports?

2. Where county commissioners have allowed, approved and paid such clerks for such reports in the past, is there any liability on the part of such county commissioners or clerks and their bondsmen for the repayment of such amounts?

To: Honorable Bryan Willis, State Auditor:

.....

If the clerk was paid a flat or definite amount as compensation for acting as clerk of the board of county commissioners (under Section 28.25) it should be presumed, in the absence of some definite showing, that such compensation included the making of the report required by said Chapter 128, Florida Statutes 1941. If he were paid on a fee basis then the making of the report should be paid for on that basis.

.....

..... it seems that the preparation of the reports in question are usually a part of the duties of the clerk of the circuit court as clerk of the board of county commissioners for which he is entitled compensation under Section 28.25, Florida Statutes 1941.

..... If the county commissioners have wrongfully paid out any county funds it may be that they and their bondsmen may be liable for their repayment, as well as the officer to whom paid and his bondsmen.

The second question is, therefore, not here answered but Section 21.11, Florida Statutes 1941, is called to your attention.

COUNTY ANNUAL BUDGET

September 29, 1949.—049-465.

COUNTY COMMISSIONERS—NO AUTHORITY TO TRANSFER
COUNTY DISTRICT ROAD AND BRIDGE FUNDS TO BREVARD
MOSQUITO CONTROL DISTRICT

QUESTION: May the board of county commissioners of Brevard county, Florida, transfer funds from the county general road and bridge fund, and from a special road and bridge fund in the county, to the Brevard Mosquito Control District, for the purpose of erecting an aeroplane hangar and building landing strips?

To: *Honorable A. Fortenberry, Chairman, Brevard County Commissioners, Merritt Island, Florida:*

.....

The above question should, therefore, be answered in the negative.

March 4, 1950.—050-109.

SHERIFFS' FEES—FEEDING PRISONERS—"INSANITY INQUIRIES"
—STATE COMPTROLLER—GOVERNS FUNDS PAID FROM

QUESTIONS: 1. Where persons are, by order of the county judge, incarcerated in the county jail awaiting examination by a sanity commission, against what county fund should the warrant for feeding those so held, be drawn?

2. Where county convicts are not worked by the county in which they are convicted but are incarcerated for the duration of their sentences in the county jail, against what fund should the county's warrant be drawn for feeding such prisoners?

To: *Honorable Rex T. Yates, Clerk Circuit Court, Washington County, Chipley, Florida:*

Upon an examination of the statutes, we fail to find any which specifically cover the expenditure set forth in question 1. By checking with the State Auditor's Office, I find that the Comptroller pursuant to Section 129.03, Florida Statutes 1941, which provides in part, "In case of any question arising as to the proper fund from which any expenditure should be paid, the decision of the state comptroller shall govern," has ruled that sheriff's fees for feeding such persons so detained be paid from the General Fund and charged to Account No. 562, which is designated, "Insanity Inquiries." Therefore, your warrant should be drawn, accordingly.

.....

..... Since the prisoners of Washington County are not worked upon the roads but are incarcerated in the county jail for the duration of their respective sentences, the sheriff's fees for feeding them should be charged to the Fine and Forfeiture Fund.

April 3, 1950.—050-176.—See: Opinion No. 049-556

COUNTY BUDGET COMMISSION—CONTROL OF—RACE TRACK
FUND—WATER SYSTEM—GASOLINE TAXES—CHAPTERS 26465,
26321, ACTS 1949—PINELLAS COUNTY

QUESTIONS: Does the County Budget Commission created by Chapter 26465, Laws of Florida, 1949 Extraordinary Session, have

authority and control over funds derived and accumulating to Pinellas County from the following sources:

1. Race track fund
2. Gasoline tax fund
3. County water system?

To: *Honorable John C. Blocker, County Attorney, Board of County Commissioners, Pinellas County, Clearwater, Florida:*

.....

..... the answer to your first question is in the affirmative.

.....

Therefore, your second question is answered in the negative.

.....

In view of the foregoing it is my opinion that your third question should be answered in the affirmative.

September 6, 1950.—050-433; 049-556; 050-176.

**PINELLAS COUNTY HEALTH BOARD—RENTAL CONTRACT—
BUDGET COMMISSION—NO AUTHORITY**

QUESTIONS: 1. Does the budget commission of Pinellas County have authority to strike or delete from the budget of the Pinellas County Health Board an item for rental to the Florida State Improvement Commission?

2. Does the said budget commission have authority to initiate or add an item to a budget filed with said commission by an officer or board?

To: *Honorable John C. Blocker, Special Counsel for the Pinellas County Health Board, St. Petersburg, Florida:*

.....

In view of the foregoing, it is my opinion that the County Budget Commission does not have the authority to strike or delete from the budget of the Pinellas County Health Board an item for rental to the Florida State Improvement Commission if such rental item is payable in pursuance of a valid rental contract existing between the Health Board and the Improvement Commission.

Therefore, so conditioned, your first question is answered in the negative.

.....

Therefore, the answer to your second question is in the negative.

November 1, 1950—050-514.

**BUDGET COMMISSION—AUTHORITY TO STRIKE FROM BUDGET
COUNTY ATTORNEY'S SECRETARIAL HELP—PINELLAS COUNTY.**

QUESTION: Does the Budget Commission of Pinellas County, Florida, have the power and authority to strike, from the budget submitted by the Board of County Commissioners of said county, an item for secretarial help for its County Attorneys?

To: Board of County Commissioners, Pinellas County, St. Petersburg, Florida:

.....

Under the circumstances we feel that the County Budget Commission acted within the apparent scope of their jurisdiction; however, we do not pass upon the question of the reasonableness of their action or whether there may have been an abuse of discretion, as those questions are subject to judicial review in appropriate proceedings (*Sparkman v. County Budget Commission*, supra) but do not subject their determination to collateral attack. This seems to answer the above question in the affirmative.

COUNTY BONDS

September 16, 1949.—049-442.

BOARD PUBLIC INSTRUCTION—BOND TRUSTEES—CERTIFICATES OF INDEBTEDNESS—INVESTMENTS—HIGHLANDS COUNTY—SECTION 130.12, FLORIDA STATUTES

QUESTIONS: 1. May the bond trustees of Highlands County, Florida, under Section 130.12, Florida Statutes, have authority to invest their surplus funds in certificates of indebtedness issued by the board of public instruction of that county, pursuant to Chapter 25450, Laws of Florida, Acts of 1949, and secured by a pledge of the race track funds allocated or to be allocated to such board of public instruction?

2. May the board of public instruction of Highlands county, Florida, issue certificates of indebtedness, pursuant to Chapter 25450, Laws of Florida, Acts of 1949, to raise funds for the construction of a gymnasium at the Lake Placid school and the Avon Park school?

To: Honorable Keith E. Collyer, County Attorney, Avon Park, Florida:

.....

..... the first question is answered in the negative.

..... It therefore seems that the second question should be answered in the affirmative.

COUNTY OFFICERS AND EMPLOYEES RETIREMENT SYSTEM

March 17, 1949.—049-106.

COUNTY JUDGE—RESIGNED 1942—MILITARY SERVICE—AGGREGATE YEARS SERVICE—RETIREMENT

QUESTION: Is a county judge, who resigned his office during the year 1942 to enter the military service of the United States, who remained in the service until April, 1946, when he was discharged; who was elected to his former office at the general election held in 1948, and resumed the office on January 4, 1949; entitled under the county officers and employees retirement system to credit upon aggregate number of years of service for the period during which he was in military service; and for the period within which he was county judge prior to his resignation from that office?

To: Honorable C. M. Gay, Comptroller, State of Florida:

.....

..... The question is accordingly answered in the negative.

I believe that if this case is brought to the attention of the Legislature, it will correct the existing law, which fails to cover a situation where the circumstances of a county officer's military service has operated to preclude him from receiving full credit for his prior service.

August 3, 1950.—050-371.

ELIGIBILITY—NOT AFFECTED BY MEMBERSHIP ON DEMOCRATIC CONGRESSIONAL COMMITTEE

QUESTION: May a county official who has retired and is enjoying the benefits of the County Officers and Employees Retirement System hold the position as a member of the Democratic Congressional Committee of the State of Florida without forfeiting his right to receive retirement system benefits under the County Officers and Employees Retirement System?

To: Honorable C. M. Gay, State Comptroller:

. The question is accordingly answered in the affirmative.

November 1, 1950—050-515, 050-16.

**COUNTY OFFICERS AND EMPLOYMENT SYSTEM—FORMER
CIRCUIT COURT CLERK INDEBTED TO COUNTY,
ELIGIBLE—C. 134, FLORIDA STATUTES.**

QUESTION: May a former clerk of the circuit court retire under the County Officers and Employees Retirement System even though the last official audit of this officer's records indicates he owes the county a certain sum of money which has not been repaid?

To: Honorable C. M. Gay, State Comptroller:

.

. it is my opinion that a person may retire under the County Officers and Employees Retirement System, *where he is otherwise properly qualified under the terms and applicable provisions, thereof*, even though he may at the time owe certain money to the county. This will answer your question in the affirmative.

This does not mean that the county must stand the loss of such money owed as the county has an adequate remedy at law to recover whatever sums may be due.

For your information, I am enclosing a copy of former opinion number 050-16, wherein a similar question was discussed and the authorities there cited are applicable here.

I think that it would be advisable for the Comptroller to recommend legislation to the 1951 Legislature to remedy this situation.

COUNTY BUILDINGS, ERECTION, MAINTENANCE, LEASE, ETC.

July 5, 1949.—049-301.

**COUNTY COMMISSIONERS—ERECT JAIL—AUTHORITY TO
BORROW FROM BANK—SUPREME COURT RULING RE-
QUIRED—CHAPTER 25469, ACTS 1949—SECTION 135.02,
FLORIDA STATUTES 1941**

QUESTIONS: (1) Does a Board of County Commissioners have the authority to borrow money from a bank to erect a jail, as authorized

under the provisions of Section 135.01, Florida Statutes, as amended by Chapter 25469, Laws of Florida, Acts of 1949, and Section 135.02, Florida Statutes?

(2) If such authority to borrow money exists, what rate of interest is the board authorized to pay?

To: Honorable Harold S. Smith, County Attorney, Board of County Commissioners, Everglades, Florida:

..... the above questions are answered in their numbered order as follows:

(1) Since there has been the change in the provisions of Section 135.01 by Chapter 25469, as above explained, I must respectfully refuse to answer this question for the reason that only the Supreme Court could settle with finality whether its holdings in the *Tapers vs. Pichard* case (124 Fla. 549, 169 So. 39) would now be applicable to Section 135.01 as amended by a very substantial extension of the taxing period from five to fifteen years.

(2) If the method set forth in the first question is proper, a reasonable rate of interest in accord with current money rates in similar types of loans should apply.

March 4, 1950.—050-108.

COUNTIES—COURTHOUSE AND JAIL—ANTICIPATION CERTIFICATES—BANK INVESTMENTS—NEGOTIABLE INSTRUMENTS

QUESTIONS: 1. Are revenue certificates issued by a county for the purpose of courthouse or jail construction and pledging in anticipation taxes levied and to be levied under and by virtue of the provisions of Section 135.01, Florida Statutes, as amended in 1949, negotiable instruments?

2. Are such revenue certificates legal investments for state banks?

3. Are such revenue certificates legal collateral security for state, county and governmental funds deposited with banks and trust companies?

To: Honorable C. M. Gay, State Comptroller:

..... These observations seem to answer the first question in the negative.

..... This answers the second question in the affirmative.

..... The third question is answered in the negative.

COUNTY SURVEYOR

January 4, 1950.—050-2.

LAND CORNER—RESURVEY—OFFICIAL ADOPTION OF SURVEY—COUNTY ENGINEER—EMPLOYMENT PREFERENCE—SEC. 143.01, 125.07, F. S.

QUESTIONS: 1. Has the county surveyor of a county the legal authority to move a land corner that has been set wrongly by another

surveyor where all old witnesses show conclusively that it is in the wrong place?

2. Should the county surveyor of a county have any preference in employment in establishing county roads for a county?

To: *Honorable J. J. Fussell, Sumter County Surveyor:*

.....
It is assumed that the surveyor who set the concrete marker made a resurvey dependent on the original 1854 survey and set the corner according to his findings. In the light of these circumstances, I am of the opinion that you do not have any authority to move this monument. However, you may make a dependent resurvey yourself.

.....
..... the answer to your second question is also in the negative.

COMPENSATION OF COUNTY OFFICIALS

January 13, 1949—049-10.

REPORT—COUNTY JUDGE—JUVENILE JUDGE—JUDGE OF COUNTY COURT—TO INCLUDE COMPENSATION FEES AND COMMISSIONS RECEIVED

QUESTION: Should a County Judge, who is also Juvenile Judge and Judge of the County Court, report in his report of compensation the salaries received in addition to the fees and commissions collected?

To: *Honorable Flem C. Dame, County Judge, Saint Lucie County, Fort Pierce, Florida:*

.....
It is therefore the duty of such state or county official to include in his report all his remuneration whether from fees or commissions, or other remuneration.

February 8, 1949.—049-48.

EXCESS FEES—DISPOSITION

QUESTION: Where an office holder turns over excess fees to the county at the end of the fiscal year, what can the county commissioners do with such excess fees? May the county commissioners put such excess fees in its general fund or does it accrue to the credit of the official who reported and paid over such excess fees for the purpose of making up any future shortages?

To: *Mr. James W. Moore, County Attorney, Sebring, Highlands County, Florida:*

Section 145.05 and Section 145.07, Florida Statutes, 1941, provides for distribution of such funds. In my opinion these funds could not be used for the purpose of making up future shortages since this is not provided by such statutes.

April 14, 1949.—049-163.

SHERIFF'S OFFICE—HERNANDO COUNTY COMMISSIONERS— AUTHORITY TO PURCHASE OR RENT RADIO EQUIPMENT

QUESTION: Does the Board of County Commissioners of Hernando County have authority to rent or purchase radio equipment for the sheriff's office and his cars?

To: *Honorable Leamon Q. Varn, Clerk of the Circuit Court, Brooksville, Florida:*

.....

If it appears that radio equipment is necessary to a sheriff in properly and efficiently carrying out the duties of his office and since the county commissioners are required to equip the office of the sheriff it is my opinion that the county has authority to purchase or rent this equipment and the cost should be borne by the county and paid for out of the county general revenue fund.

April 15, 1949.—049-167.

COUNTY JUDGES—EXCESS FEES—NO AUTHORITY TO
WITHHOLD

QUESTION: Is it permissible for a county judge to withhold the delivery of the amount of excess fees until the taxes for the next fiscal year will become due and payable?

To: *Honorable Noah B. Butt, Attorney, Board of County Commissioners, Brevard County, Cocoa, Florida:*

I am of the opinion that Section 145.05, Florida Statutes 1941, makes it mandatory upon the county judge to turn these excess fees over to the Board of County Commissioners at the end of the fiscal year, which is December thirty-first.

September 15, 1949.—049-456.

EMPLOYEES—OUTSIDE PREPARATION OF DISTRICT TAX ROLLS
—NOT INCOME OF TAX ASSESSOR'S OFFICE—DADE COUNTY

QUESTION: Where persons employed by and working for the tax assessor for Dade County, Florida, enter into agreements with drainage or other taxing districts in Dade County, Florida, wherein they agree to prepare tax rolls or lists for such districts and do prepare such tax rolls or lists pursuant thereto, without the use of the equipment of the said office and without doing any of the state work during regular office working hours, is the compensation received by such persons under such agreements income of the said tax assessor's office within the purview and intent of Chapter 25542, Laws of Florida, Acts of 1949?

To: *Honorable J. N. Lummus, Jr., County Tax Assessor, Miami, Florida:*

.....

In the light of these observations we are of the opinion that the above question should be answered in the negative when the officer under whom such personnel receives nothing of value by reason of the agreement in question and the work is done after office hours and without the use of any office equipment.

December 20, 1949.—049-599.

COUNTY JUDGE'S FEES—REGISTRAR OF DOGS

QUESTION: Are the fees of the County Judge of Duval County, as ex officio registrar of dogs under Chapter 23263, Special Acts of 1945, official income of the County Judge, to be accounted for under Chapter 145, Florida Statutes 1941, or are such fees a personal perquisite of the person who holds the office of County Judge?

To: *Honorable Bryan Willis, State Auditor:*

.....
It is my opinion that the said \$2.00 is a part of the official income and compensation of the County Judge of Duval County, and as such should be considered in the calculation of the salary due him as County Judge.

June 6, 1950.—050-270.

COUNTY VETERINARIAN'S SALARY BASED UPON 5% OF RACE
TRACK FUNDS—CHAPTER 25282, ACTS 1949—LAFAYETTE
COUNTY

QUESTION: Under the provisions of Chapter 25282, Acts 1949, is the county veterinarian of Lafayette county entitled to be paid a salary based on 5% of the funds received by the county from state race track funds?

To: *Honorable Duffin Lancaster, State Representative, Mayo, Florida:*

.....
Your question is therefore answered in the affirmative.

August 18, 1950.—050-402.

CLERK CIRCUIT COURT—PORT AUTHORITY—SANITARY DIS-
TRICT—COMPENSATION—CHAPTER 145, FLORIDA STATUTES
APPLICABLE

QUESTION: Where the Clerk of a Circuit Court within this State is made by statute the ex officio secretary and treasurer of a Port Authority, as well as ex officio secretary and treasurer of a sanitary district, should any compensation received by the said clerk, when acting as such ex officio officer, be taken into consideration in determining the compensation of the said Clerk, as a county officer, under Chapter 145, Florida Statutes?

To: *Honorable Raymond E. Ford, Clerk Circuit Court, Fort Pierce, Florida:*

.....
In the light of these observations it seems that any compensation received by the Clerk in this connection is income of the office and should be included as such under Chapter 145, Florida Statutes. This seems to answer the above question in the affirmative.

COMPENSATION OF COUNTY OFFICIALS

October 19, 1950—050-497, 049-420, 049-454.

COUNTY JUDGES—SHERIFFS—ENTITLED FEES AND MILEAGE
UNDER CHAPTER 25241, ACTS 1949.

QUESTIONS: (1) Is the County Judge obliged to charge a fee for his services rendered under Chapter 25241, Acts of 1949? If so, is the bill for said fee submitted to the County Commissioners for payment?

(2) Are fees of the sheriff for services rendered under said act paid by the County Commissioners the same as other fees paid the sheriff by the county?

- (3) How are fees of the examining or medical committee paid?
- (4) How are expert witnesses paid?

To: Honorable William C. Brooker, County Judge, Hillsborough County, Tampa, Florida:

(1) In former opinion of this office No. 049-420, it was held that county judges are entitled to fees for services rendered in the administration and enforcement of Chapter 25241, Laws of Florida, Acts of 1949, a copy of such opinion being hereto attached. That being true, in the event a county judge is required to account for excess fees under Chapter 145, Florida Statutes, 1949, in calculating the amount of excess fees, lawfully collectible fees (such as fees for services rendered under Chapter 25241) not collected by him are chargeable to him. Thus, such a county judge required to account for excess fees might be confronted with this ironical situation: for charitable or other laudible reason he might elect not to collect fees chargeable for services rendered by him under Chapter 25241, and then be required, in effect, to pay from his own pocket the fees which he elected not to collect.

In a county where the fees of a county judge's office are not sufficient to require an accounting for excess fees under Chapter 145, Florida Statutes, 1949, it would make no difference whether he collected fees for services rendered under Chapter 25241. However, it should also be borne in mind that such uncollected fees are to be accounted for in determining if the receipts of the office became subject to the mentioned excess fees statute.

(2) Section 7 of said Chapter 25241 provides that the sheriff shall receive the same fees and mileage for service rendered under the act as are prescribed for like service in criminal cases. It further provides that such fees and mileage are to be paid out of the Fine and Forfeiture Fund of the county involved.

(3) and (4) Former opinion of this office No. 049-454, dated September 25, 1949, affords clear answer to these questions, copy of which opinion is hereto attached.

COUNTY TRAFFIC OFFICERS

August 4, 1950—050-381.

SERVICE OF PROCESS—CIVIL—CRIMINAL—TRAFFIC OFFICERS —SECTIONS 41.12 and 146.01 FLORIDA STATUTES

QUESTION: Are county traffic officers appointed under the provisions of Chapter 146, Florida Statutes, qualified to serve civil and criminal process, issued by the courts within the county in which said officers are appointed?

To: Honorable Wm. C. McLean, County Attorney, Hillsborough County, Tampa, Florida:

..... it is my opinion that traffic officers are vested with the authority to serve criminal process as provided by Section 146.04, above. However, said traffic officers do not have statutory authority as traffic officers created under Chapter 146, Florida Statutes, to serve civil process.

December 8, 1950—050-549, 050-81.

COUNTY TRAFFIC OFFICER—PAYMENT OF LIABILITY INSURANCE PREMIUMS BY COUNTY NOT AUTHORIZED—
C. 146, FLORIDA STATUTES

QUESTION: Where a county traffic officer, appointed pursuant to Chapter 146, Florida Statutes, 1949, operates his personal automobile in the discharge of his duties, may the board of county commissioners properly pay the premiums upon a policy insuring his automobile against property damage, bodily injury and collision?

To: *Honorable Langley Bell, Clerk Circuit Court, Escambia County, Florida:*

.....

Since county commissioners have no powers other than those vested in them by statute or such as must be necessarily implied to put into effect powers expressly vested in them (*Crandon v. Hazlett*, 157 Fla. 574, 26 So. 2d. 638; *Gessner v. Del-Air Corporation*, 154 Fla. 829, 17 So. 2d. 522), the board of county commissioners is not authorized to pay for the insurance premiums mentioned above and the question is answered accordingly.

COUNTY AIRPORTS

March 22, 1949—049-119.

HILLSBOROUGH COUNTY AVIATION AUTHORITY—NO AUTHORITY TO EXPEND FUNDS FOR PUBLIC LIABILITY INSURANCE

QUESTION: Does the Hillsborough County aviation authority have the authority to expend funds for public liability insurance to cover airports now in operation in Hillsborough County?

To: *Honorable I. C. Spoto, County Attorney, Hillsborough County, Tampa 1, Florida:*

.....

..... it does not appear that Hillsborough County Aviation Authority has the authority to expend its funds for public liability insurance in connection with its functioning.

COUNTY FREE PUBLIC LIBRARIES

February 23, 1949—049-72.

APPROPRIATION—ASSESSMENT—ELECTION—PUBLIC FUNDS—EXPENDITURE

QUESTION: Whether the County Library Law of 1931, amended 1941, prohibits a county from appropriating for library service from its general fund, or whether the county must wait for the favorable referendum and the special assessment before setting up library service, specifically by bookmobile?

To: *Mrs. William Steitz, Chairman, Library Service, Florida Federation of Women's Clubs, Lakeland, Florida:*

The Acts of 1931 as amended 1941, appears as Section 150.01-10, Florida Statutes Annotated. The amended Act in Sections 150.09 and

150.10 still require an election before a free library or free library service shall be provided; and hence, a condition precedent to the expenditure of any public funds for that purpose.

July 13, 1949—049-318.

COUNTY COMMISSIONERS—DONATIONS TO CIVIC ORGANIZATIONS—COUNTY FUNDS—ESTABLISH—PUBLIC LIBRARY—CHAPTER 150, FLORIDA STATUTES

QUESTION: May the County Commissioners lawfully make donations to assist the following:

The Martin County Chamber of Commerce,
Martin County School Band,
Martin County Golf Club to assist in maintenance of the course,
Committees for Fourth of July celebrations,
American Legion, for baseball teams,
Street patrolman for school children's protection (by City of Stuart),
Martin County Public Library,
Martin County Sailfish Club,
and other similar organizations?

To: Mr. J. R. Pomeroy, Clerk Board of County Commissioners, Martin County, Stuart, Florida:

This opinion is based upon the assumption that you have no local or special act authorizing expenditure of county funds for any of the above purposes.

The Board of County Commissioners may establish and operate a free public library or free library service for the county, provided the library or the service is established in the manner prescribed by Chapter 150, Florida Statutes of 1941. It is not lawful for the County Commissioners to use public funds for a public library except in compliance with that chapter.

There is no authority for use of county funds for donations to any of the other organizations or purposes listed in your question.

COUNTY PUBLIC HEALTH UNITS

May 9, 1950—050-234.

COUNTY PUBLIC HEALTH UNITS—DUTIES—DISPOSITION OF CERTAIN MONEYS—CHAPTER 154, FLORIDA STATUTES APPLICABLE

QUESTIONS: 1. Where septic tanks and privy superstructures are not otherwise readily available, in any urban or rural area, may county public health units, established under Chapter 154, Florida Statutes, manufacture or cause to be manufactured for public sale and use such septic tanks and privy superstructures?

2. If the first above question is answered in the affirmative, then what disposition should be made of the moneys received in connection with the sale and furnishing of such septic tanks and privy superstructures by the said county public health units?

3. May a revolving fund be set up for the use of a local health unit in connection with the manufacture and furnishing of the above facilities?

To: Honorable C. M. Gay, State Comptroller:

.....

..... The first question is answered in the affirmative, conditioned upon the fact that such facilities are not otherwise readily available in such area.

Because there are no statutes expressly authorizing county public health units to go into the business of manufacturing septic tanks and privy superstructures, such manufacture may be justified only as being necessary for the proper carrying out of the requirements, intentions and purposes of the statutes relating to health and sanitation, which statutes should be liberally construed so as to accomplish their purposes. Any compensation received by the said health units in this connection has the status of a reimbursement of the funds from which the costs and expenses of production were paid. The said payments are in the nature of a refund to the health units accounts. This being true we feel that the funds should be credited, in the nature of a refund or reimbursement, to the fund from which the costs and expenses of production were paid. They should not be treated as creating a separate account of the said health unit. This seems to answer the second question.

If the needs and requirements of a county public health unit are such as may require a revolving fund for the proper operation thereof, within the rule announced in an opinion of this office to the State Comptroller under date of October 4, 1945 (1945-6 Biennial Report 466), I see no reason why one should not be established to be operated as set out in the above opinion of October 4, 1945 and another opinion of September 11, 1945 (1945-6 Biennial Report 96). Copies of the above opinions are furnished you herewith.

July 12, 1950—050-338—046-298.

COUNTY COMMISSIONERS—HOME FOR AGED INDIGENT CITIZENS—AUTHORITY UNDER ARTICLE XIII, SECTION 3,
CONSTITUTION AND SECTIONS 155.04-05, FLORIDA
STATUTES—OKEECHOBEE COUNTY

QUESTION: "The Board of County Commissioners desire to construct a home for the aged and indigent citizens of Okeechobee County. There is approximately \$8,000.00 available in the present budget for this purpose but the architect estimates that the entire cost, including equipment, will run about \$23,000.00.

"Is it legal for the Board of County Commissioners to obtain a loan by securing same with a mortgage on the old folks' home to be paid in one and two years with interest, the board to provide for payments on the mortgage in the budgets for 1950-51 and 1951-52?"

To: Honorable T. W. Conely, Jr., County Attorney, Okeechobee, Florida:

Section 3, Article 13 of the Florida Constitution provides authority for the maintenance by counties for homes for old and indigent persons.

I do not believe, however, that the method of financing contemplated in your question is permissible in the absence of an election of the freeholders of the county authorizing a bond issue for the purpose.

This opinion is in accord with one previously issued by this office in which I concur. In this opinion, No. 046-298, in response to a similar question, the following statement was made:

"Answering your first question, Section 155.04, Florida Statutes, 1941, provides for the establishment and maintenance of a public hospital by the county and the issuance of bonds therefor, and requires the same to be submitted to the freeholders.

"Section 155.05, Florida Statutes, 1941, provides that if any county by reason of funds on hand, or donations or otherwise, is able to build and establish a public hospital without issuing bonds then the county commissioners may establish such hospital and without an election levy an annual tax for the *maintenance* thereof, such tax not to exceed five mills on the dollar, etc.

"I know of no authority for the county commissioners to attempt to appropriate one hundred thousand dollars for the building of a hospital and prorate same over a period of ten years.

"Answering your second question if, as and when you establish a public hospital as set forth in the above section, then you may levy an annual tax for the maintenance thereof provided it does not exceed the millage as allowed by law."

It might be possible for your board to contract with the Florida State Improvement Commission to construct the building and lease it to the county on a two year lease, paying \$8,000 at the time the lease is executed and the balance one and two years thereafter out of any available county funds. See *State v. City of Miami*, (Fla.) 7 So. 2d. 146.

In accord with the above observations, your question must therefore be answered in the negative.

LAW LIBRARY BOARD

December 21, 1949—049-605.

TERM OF OFFICE—MEMBERS—LAW LIBRARY BOARD—ART. XVI, §7, FLA. CONST.

QUESTION: A person heretofore appointed one of the directors of a county "Law Library Board" for the one year term, as provided by Section 1, Chapter 24009, Laws of Florida, Acts of 1947, upon expiration of such term has been reappointed as a director of said Board. Should such appointment and commission to be issued in connection therewith be for a four-year term or a five-year term?

To: Honorable R. A. Gray, Secretary of State:

.....
The provisions of the quoted portion of the act which provides for five-year terms for such directors would seem to offend Art. XVI, §7, Florida Constitution. However, on the authority of *State ex rel. Landis, vs. Green*, 107 Fla. 335, 114 So. 681, it appears that properly the person mentioned above in the question may receive the appointment to succeed himself as member of such a Law Library Board for a term of four years, instead of the five years specifically provided by the act.

CHAPTER X

CITIES AND TOWNS

ORGANIZATION AND DISSOLUTION OF MUNICIPALITIES

April 20, 1949—049-169.

LEGISLATURE—POWER TO ESTABLISH AND ABOLISH MUNICIPALITIES—PROTECTION CREDITORS REQUIRED

QUESTION: What procedure must be followed in abolishing municipalities in Dade County, Florida, which municipalities were created under the General Statutory Law since January 1, 1945, and some of which municipalities have incurred bonded and other indebtedness?

To: Honorable R. B. Gautier, Jr., State Senator, 13th District, Senate Chamber, Capitol:

Section 165.26 provides that a municipality may be abolished by an election of the registered voters in such city or town. Section 165.28, Florida Statutes Annotated, provides that if a city or town is abolished owning debts that the tax assessor of the county in which such city or town is located shall assess taxes on the property located within the limits of such city or town and the tax collector of the county shall collect such taxes to be applied to the indebtedness.

Section 8, Article VIII, of the state constitution, gives the Legislature power to establish and abolish municipalities but when so abolished shall provide for the protection of its creditors. Section 21, Article III, of the state constitution, relates to local or special laws establishing or abolishing municipalities.

Our Supreme Court has repeatedly held that where a municipality is abolished, provision shall be made for the protection of creditors.

It is my opinion that you may proceed either under the provisions of the above cited statutes or by a special or local act of the Legislature, pursuant to the above mentioned constitutional provisions. If you proceed by local or special enactment under the provisions of Section 21, Article III, notice of intention to apply for such local or special legislation must be given, as provided in said constitutional provision, as said provision expressly requires such notice of "any local or special law establishing or *abolishing* municipalities" unless the bill is to be submitted to a referendum of the electors in the locality to be affected.

November 23, 1949—049-563.

ELECTION—FREEHOLDER STATUS—ELECTORS—QUALIFICATIONS—LYNN HAVEN, CITY OF— CHAPTER 25990, ACTS 1949

QUESTIONS: (1) What is a "freeholder," in the City of Lynn Haven, Florida, as such quoted word is used in Section 11, Chapter

25990, Laws of Florida, Acts of 1949, in relation to the qualifications of a member of the City Commission of said municipality? For example: In order for a person to be a freeholder in such municipality must his name appear in a deed to real property located in said municipality, or if he is an heir to such property, is he a freeholder. If "a man and his wife own" such real property but the title is in his name only, is his wife a freeholder?

(2) What is the length of residence required of a person in the City of Lynn Haven to qualify as an elector in said municipality under Chapter 25990?

To: Mr. Lee Curtis, Manager-Clerk, Lynn Haven, Florida:

(1) A person is deemed to be a freeholder in said municipality if such person has an immediate beneficial ownership interest, legal or equitable, in the title to a fee simple estate in and to real property in said municipality. An heir who has such a present interest in real property (that is, a person who has inherited an entire or an undivided interest in the fee simple title to real property) is such a freeholder, even though there is no deed conveying such an interest to him. A wife is not a freeholder solely by virtue of the fact that her husband owns the fee simple title to real property. Where under particular circumstances a wife might be able to establish in a court of equity a present interest in such title to land conveyed to the husband only, in the absence of establishment of such interest, election officials should disregard any claim of the wife to such interest.

(2) (a) a duly registered elector in the county registration books who, by virtue of such registration, is presently qualified to vote in state and county elections, is "a qualified voter under the State law;" (b) Such person must have "resided in the City of Lynn Haven for a period of six months;" and (c) Such person must be "registered as a voter in said City in such manner as may be prescribed by ordinance."

June 30, 1950—050-327.

NOTARY PUBLIC QUALIFIED TO ADMINISTER OATH OF
OFFICE TO MAYOR-ELECT—OCOEE, CITY OF— SEC-
TION 165.06, FLORIDA STATUTES APPLICABLE

QUESTION: Is a notary public qualified to administer the oath of office to the Mayor-elect for the City of Ocoee, Florida?

To: Honorable W. H. Wurst, Clerk and Treasurer, City of Ocoee, Florida:

. When we take into consideration and construe together all statutes and laws relating to the taking of official oaths and the practice in that connection over a long period of time, we feel that a notary public may administer the oath required by said charter of the City of Ocoee, Florida.

December 11, 1950—050-559.

SUPERVISORS OF REGISTRATION—ELIGIBLE VOTER LIST—
DUTIES—ORGANIZATION OF MUNICIPAL CORPORATION
—C. 165, F. S. BROWARD COUNTY.

STATEMENT and QUESTIONS: The inhabitants of a certain area located in Precinct 23, Broward County, Florida, are proceeding in

pursuance of the provisions of Chapter 165, Florida Statutes, 1949, for the purpose of organizing a municipal corporation. Certain of those interested in such proceedings have requested the supervisor of registration of Broward County to furnish them a list of the electors who are freeholders residing in the area sought to be incorporated in connection with the procedure required, particularly for use at the meeting called for December 13, 1950, to organize the municipal government and elect officers therefor.

(1) What duty devolves upon the supervisor of registration with respect to preparation of a certified list of freeholder electors of the area involved qualified to participate in such meeting to be held December 13, 1950?

(2) In view of the provisions of Sections 10 and 11 of Chapter 24216, Laws of 1947 (providing a permanent registration system for Broward County) relating to the closing of the registration books prior to described elections, for the purpose of such meeting called to be held December 13, 1950, should the supervisor restrict such list of freeholder electors to those registered on or prior to the thirteenth day preceding such meeting?

To: *Mrs. Easter L. Gates, Supervisor of Registration, Broward County, Ft. Lauderdale, Florida:*

..... in my opinion the above questions properly are answered as follows:

(1) The list to be furnished by the supervisor of registration to those interested in the meeting called for December 13, 1950, as described in the above statement and questions, should include the inhabitants of the area involved who are freeholders and registered electors according to the registration records of Broward County at 5:00 o'clock p. m., December 12, 1950.

(2) As indicated by the preceding answer to the first question, the position is here assumed that the quoted provisions of Chapter 24216 relating to the closing of the registration books of Broward County prior to the elections described therein are not applicable to an election of the kind contemplated by Section 165.04.

December 12, 1950—050-557.

MUNICIPAL ELECTIONS—CANDIDATES—QUALIFICATIONS—
SECTION 98.01, SECTION 165.12, FLORIDA STATUTES
APPLICABLE

QUESTIONS: 1. What qualifications must a candidate possess before he can be elected to office in the Town of Windermere?

2. Must such a candidate be a registered voter of said Town?

To: *Honorable J. B. Rodgers, Jr., Attorney-at-Law, Winter Garden, Florida:*

..... in my opinion the above questions properly are answered as follows:

(1) This answer is subject to the discrepancy existing between the provisions of Section 165.12 and said ordinance, as noted above,

and for the purposes hereof, said ordinance is assumed to be valid. Under said ordinance persons who possess the qualifications of electors under Section 98.01, Florida Statutes, excepting Subsection 6 thereof, and "who have been residents of the Town of Windermere for more than sixty days prior to any election of the said town," and who have registered in the Town's registration books, are qualified electors of such town for such an election, regardless of whether they are registered in the general registration books of the county for the purposes of state and county elections. By the clear wording of Section 5 of the ordinance, candidates for any office in the Town of Windermere shall possess the same qualifications as electors as set forth above in this paragraph.

(2) As indicated in the answer to the first question, it would seem that a candidate must be duly qualified to vote in elections of said Town; hence, must be registered in the registration book of said Town.

MUNICIPAL CHARTER AND CHARTER AMENDMENT

March 4, 1950—050-111.

MUNICIPALITIES—ORDINANCES—RESOLUTIONS—AFFIRMATIVE VOTE—QUORUM REQUIRED—NEW SMYRNA BEACH COMMISSION

QUESTION: Where the charter of a municipality provides that the affirmative vote of a majority of the members present (the commission consisting of five (5) members) shall be necessary for passage of ordinances and resolutions and upon roll call, two (2) commissioners vote "yea", two (2), "present" and the fifth (5th), "nay", does the motion fail?

To: E. W. Gautier, Esquire, City Attorney, New Smyrna Beach, Florida:

.....

..... the question is answered in the negative.

GENERAL POWERS OF MUNICIPALITIES

March 15, 1949—049-108.

NEW SMYRNA—SELLING MUNICIPALLY OWNED POWER LINE—METHOD

QUESTION: Can the city commission sell a municipally owned power distribution line that extends 10 miles beyond the city limits without an election under Section 193 of the City Charter? (Special Law of 1943, c. 22408.)

To: Honorable E. W. Gautier, New Smyrna Beach, Florida:

.....

Although the transmission line is outside of the city limits, Section 7 of Chapter 22408, permits it to be sold, but I am of the opinion that Section 193 of Chapter 22408 provides the method by which it shall be sold and that an election of the qualified freeholders is necessary for the validity of the sale.

May 16, 1949—049-212.

**MUNICIPALITY—NO AUTHORITY TO EXEMPT INDUSTRIAL
PLANT FROM TAXES**

QUESTION: Does a municipality have authority to exempt an individual or concern and all its property from all taxes for a period of five years as an inducement for locating within the city?

To: Grimes and Grimes, City Attorneys, Palmetto, Florida:

.....
..... your question should be answered in the negative.

August 25, 1949—049-409.

**TAXATION—PROPERTY EXEMPTIONS, POWER TO GRANT—
RULE**

QUESTION: Under what principles may a municipality in this state grant exemptions from taxation to real property held in private ownership?

To: Honorable C. C. Whiddon, City Clerk, Cedar Key, Florida:

.....
Your request seems to have as its basis a promise by some person to construct certain housing units within the municipality if the municipality will grant him an exemption from taxation thereon for a period of five years.....

..... unless the development in question is to be used for some municipal, educational, literary, scientific, religious or charitable purpose, it cannot be granted exemption from taxation. In this connection, the rules applicable to the county tax assessor would seem to also be applicable to the municipal tax assessor.....

December 8, 1949—049-581.

**ADVERTISING FUNDS—CIVIC ORGANIZATIONS—DONATIONS
AUTHORIZED—LAKELAND, CITY OF**

QUESTIONS: 1. Is the city of Lakeland authorized to make donations to the following organizations for the purpose of advertising the city: The Lakeland Chamber of Commerce; the Lakeland Junior Chamber of Commerce; the Lakeland School Boy Patrol; the Lakeland Yacht and Country Club for the purpose of holding an annual boat regatta?

2. May the city of Lakeland expend such advertising money out of the funds received in the revenue from its operation in a proprietary capacity?

3. May such funds be expended as set forth above when they are commingled with ad valorem tax money?

4. May the city of Lakeland pay the Lakeland Humane Society twenty-five dollars a month for the purpose of caring for stray dogs?

To: Honorable J. C. Rogers, City Attorney, Lakeland, Florida:

.....
Since, as you state the city of Lakeland is authorized under its charter to spend funds for advertising, I can see no reason why

municipal advertising funds may not be expended through the organizations listed in question one.

.....

In the absence of statutes providing otherwise, I know of no distinction between the use of funds derived from ad valorem taxes or other sources in budgeting funds for advertising purposes by a city. Questions two and three are consequently answered in the affirmative.

..... I am of the opinion that the capture and care of stray dogs or other animals is a necessary municipal function, both from a health and humane standpoint. Question four is therefore answered in the affirmative.

August 24, 1950—050-412.

STATE HIGHWAY PATROLMAN—TRAFFIC—MUNICIPALITY—
AUTHORITY TO COMPENSATE—CHATTAHOOCHEE,
CITY OF

QUESTION: The Town of Chattahoochee has an unusual and aggravated traffic problem due to the construction of a nearby dam and other factors. Under these circumstances is there any legal objection to the municipality paying the rent on a dwelling house to be occupied by a patrolman of the Florida Highway Patrol, it being understood that the patrolman will be stationed in Chattahoochee and will assist in controlling said traffic problem along with his regular duties as a State Highway Patrolman?

To: Honorable George K. Armes, Clerk and General Superintendent,
Town of Chattahoochee:

.....

A State Highway Patrolman is not a state officer, and neither is the position of City Policeman a state office within the meaning of the constitutional prohibition against one person holding more than one state office at the same time.

The duties of the patrolman in assisting to control city traffic, as contemplated in your question, would not be inconsistent with his regular or ordinary duties as a State Highway Patrolman.

Taking the above into consideration, I know of no valid legal objection to the action of the City in augmenting the pay of a State Patrolman, assuming, of course, that the State Department of Public Safety has no objection to such action as a matter of policy.

Your question is, therefore, answered in the negative.

October 2, 1950—050-475.

MUNICIPALITIES—WEARING MASKS—BURNING CROSSES—
MAY BY ORDINANCE—MAKE IT UNLAWFUL

QUESTIONS: 1. May a municipality by ordinance make it unlawful for a person or persons to appear upon its streets and property within its corporate limits while wearing a mask or other device to conceal identity, excepting from the operation of the ordinance persons wearing holiday costumes, actors and persons under 16 years?

2. May a municipality make it unlawful for a person to erect or burn a cross upon another's property or on public property within its corporate limits, without first having received permission from the owner?

To: Messrs. Sanders & McEwen, City Attorneys, Orlando, Florida:

.....
..... it seems logically to follow that reasonable ordinances regulating the wearing of disguises in public are not violative of any constitutional guarantee. The question is answered in the affirmative.

.....

..... The second question is answered in the affirmative.

No attempt is made hereby to pass upon the validity of the proposed ordinance as submitted. This opinion undertakes only to discuss generally the points of law which may challenge the city's police power in the stated situation. The validity of the ordinance if enacted, is for the determination of the court.

POLICE POWERS OF MUNICIPALITIES

February 22, 1949—049-63.

TEMPLE TERRACE, TOWN OF—PRISONERS—COUNTY JAIL— CONFINEMENT LEGAL

QUESTION: "Since the town of Temple Terrace does not have a jail, may persons convicted by the municipal court of that town be confined in the county jail of Hillsborough county?"

To: Honorable Hugh Culbreath, Sheriff, Hillsborough County, Tampa, Florida:

Although there is no specific statutory authority for such action it is my opinion that there is an implied authority.

.....

This question therefore is answered in the affirmative.

June 16, 1950—050-295—049-63.

MUNICIPAL PRISONERS—INCARCERATION IN COUNTY JAIL AS TEMPORARY EMERGENCY BASIS— ST. AUGUSTINE, CITY OF

QUESTION: May the city of St. Augustine enter into a valid agreement with the Board of County Commissioners of St. Johns county whereby city prisoners will be confined in the county jail?

To: Willard Howatt, Esquire, City Attorney, St. Augustine, Florida:

.....

..... Under the circumstances presented here, wherein a permanent arrangement is contemplated, I believe that there might be a question as to its legality in the absence of statutory authority. I therefore suggest that special legislation authorizing such an agreement be enacted at the next legislature and that in the interim the agreement be made only on a temporary emergency basis. Subject to the above remarks, your question is answered in the affirmative.

FIREMEN'S RELIEF AND PENSION FUND

February 9, 1950—050-69.

INSURANCE—DOMESTIC INSURERS—MUNICIPALITIES—TAX
AUTHORIZED—LIABILITY—SECTION 175.05 F.S. '41

QUESTION: Are domestic insurers, as described in and contemplated by Chapter 25344, Laws of Florida, Acts of 1949, liable for the payment of the tax which municipalities are authorized by Section 175.05, Florida Statutes, to levy subject to certain conditions?

To: Honorable J. Edwin Larson, Insurance Commissioner:

..... Domestic insurers engaged in the business of fire and tornado insurance as contemplated by Chapter 25344, Laws of Florida, Acts of 1949, and as such exempt from the payment of the gross premium tax imposed by Section 205.43, Florida Statutes, to the extent set forth in Chapter 25344, are liable for the payment of the tax which municipalities are authorized by Section 175.05, Florida Statutes, to levy.

June 3, 1950—050-267.

MUNICIPALITIES—FIREMEN'S RELIEF AND PENSION FUND—
PART-TIME EMPLOYEES—APALACHICOLA, CITY OF—
SECTION 175.15, FLORIDA STATUTES APPLICABLE

QUESTION: Where firemen of a municipality are part time employees and are paid only for attending drills and assisting at fires, is such municipality entitled to participate in the "Firemen's Relief and Pension Fund," created by Chapter 175, Florida Statutes, 1949?

To: Honorable C. H. Bourke Floyd, City Attorney, Apalachicola, Florida:

Section 175.01, Florida Statutes, 1949, creates the above captioned fund in each municipality "which now has or may hereafter have a regularly organized fire department," which owns and uses "equipment and apparatus of a value exceeding five thousand dollars in serviceable condition, for the extinguishment of fires." (Underscoring supplied).

.....
Therefore, if your city meets the requirements of the portion of Section 175.01, Florida Statutes 1949, as underlined above, the question is answered in the affirmative.

July 7, 1950—050-330—050-267.

VOLUNTEER FIREMEN—FUNERAL EXPENSES—PENSION FUND—
MAXIMUM BENEFITS ALLOWABLE—SECTION 175.18,
FLORIDA STATUTES

QUESTION: Can the maximum benefits of two hundred dollars (\$200.00) be disbursed from the Firemen's Pension Fund account for funeral expenses of a volunteer fireman, who had served without pay?

To: Honorable J. Edwin Larson, Insurance Commissioner:

..... that your question should be answered in the affirmative, where all applicable provisions of the laws are complied with and followed.

MUNICIPAL ZONING

November 1, 1949—049-520.

ZONING ORDINANCE—BUILDING CODE—BELLE VISTA BEACH,
TOWN OF—SECTION 176.02, SUPRA

QUESTIONS: 1. Is a town which has been duly incorporated under the provisions of Chapter 165, F.S.A., 1941, as amended, empowered by Section 176.02, supra, to enact a zoning ordinance and building code prior to the time the town lawfully secures a charter?

2. If question 1 is answered in the negative, can such town lawfully enact a zoning ordinance and building code under a 'home rule' charter adopted pursuant to Chapter 166, supra, and including specific authority to enact such regulations?

To: *Honorable Arthur T. Ratchiffe, Attorney for Town of Belle Vista Beach, St. Petersburg, Florida:*

.....

Both questions one and two are consequently answered in the negative.

August 28, 1950—050-424—049-520.

MUNICIPALITIES—ZONING REGULATIONS—CHAPTERS
165, 176, FLORIDA STATUTES

QUESTION: May a municipality incorporated under the general law of the State of Florida (Chapter 165 Florida Statutes 1949) enact zoning laws and regulations?

To: *Mrs. Bernice C. Pitt, Town-Clerk, Indian Rocks Beach, Florida:*

.....

Hence, the question is answered in the affirmative.

It was intended that Opinion No. 049-520 dated November 1, 1949, should govern the situation where the proposed municipality has not completed its incorporation. Opinion No. 049-520 is modified to the extent that where a municipality is incorporated either under the general law of the State (Chapter 165, Florida Statutes 1949) or a special act which grants it no authority to zone, then in either event the governing body of the municipality may pursuant to the provisions of Chapter 176 Florida Statutes, enact reasonable zoning regulations.

MAPS AND PLATS

June 22, 1950—050-305.

CLERKS CIRCUIT COURTS—LANDS—DEED OF CONVEYANCE—
PLAT—RECORDED WITH—NOT ALLOWED—
CHAPTER 177, FLORIDA STATUTES

QUESTION: May a clerk of the circuit court, in the light of the requirements of Chapter 177, Florida Statutes, legally receive for record and record a map or plat of lands when the same is attached to a deed of conveyance?

To: *Honorable Ralph E. Earbert, Clerk Circuit Court, Bunnell, Florida:*

..... the above stated question is answered in the negative.

POLICE OFFICERS INSURANCE AND ANNUITIES

June 29, 1950—050-324.

POLICE OFFICERS INSURANCE AND ANNUITY FUND—CITIES— CONTRIBUTIONS—REFUNDS—SECTION 182.14, FLORIDA STATUTES APPLICABLE

QUESTION: Where several cities have made contributions to the Police Officers Insurance and Annuity Fund, as authorized by Section 182.14, Florida Statutes, and, under the authority of Section 182.21, the Board of Commissioners of said Fund has ordered a suspension of the operations of said Fund, does the Board have authority to refund the contributions made by the aforementioned cities?

To: *Honorable J. Edwin Larson, State Treasurer:*

..... Therefore, your question is answered in the negative.

FIRE CONTROL DISTRICTS

April 18, 1950—050-205.

MUNICIPAL CORPORATION—ANNA MARIA ISLAND—FIRE CON- TROL DISTRICT— COMMISSIONERS APPOINTMENT— VALIDITY QUESTIONED CHAPTER 25994, ACTS 1949

QUESTION: Chapter 25994, Laws of Florida, Acts of 1949, sought to provide for the establishment of a public municipal corporation under the name of Anna Maria Island Fire Control District, such district to include the lands and territory described in the act. By Section 1 of the act, the lands to be included in said district should become and be incorporated into and as such special fire control district, "Upon the making of an order by one of the Judges provided for in Section 18 hereof . . ." There is no Section 18 in the act, nor is there any provision in the act which apparently is referred to by such reference in Section 1. In the absence of such Section 18 referred to, has there been or may there be, a valid establishment of such fire control district?

To: *Honorable Frank S. Wright, Assistant to Governor Warren:*

..... Thus, it is apparent that with the deletion of Section 18 of the act as it was originally prepared, grave doubt exists, (1) that there can be an establishment of this district as a public corporation as intended, and (2) that the Governor may lawfully appoint the commissioners of the district as contemplated by the act. It is not the province of this office to pass upon the validity of legislative acts under the circumstances here found. Hence, it is suggested that the act be submitted to the court by the proper parties for declaratory decree to determine if it is valid and may be made effective, particularly in relation to the features above mentioned. Unless the court in such a proceeding shall decree that the act may be made effective and that the Governor is authorized to appoint the commissioners mentioned, in my opinion the Governor should not assume he has the authority to appoint such commissioners.

CHAPTER XI

TAXATION AND FINANCE

GENERAL PROVISIONS

March 23, 1949—049-121.

PROPERTY—RIPARIAN OWNERS—SUBMERGED LANDS—TAX CERTIFICATES—VALIDITY NOT GUARANTEED

QUESTIONS: 1. When the improvements upon a parcel of land are removed after the first of January of the year for which taxes were assessed and the parcel of land or a part thereof is washed away by the sea does this in any way affect the validity of the tax certificate issued for the non-payment of such taxes?

2. Does the purchaser of such a tax sale certificate have any recourse against the county or other person?

To: *Honorable Lloyd M. Hicks, Clerk of Circuit Court, Bradenton, Manatee County, Florida:*

.....

In the light of these observations it seems that the tax certificate would continue to encumber whatever portion of the real estate, if any, remaining and that the purchaser of such certificate has no recourse against the county or any other person for any decrease in its value. The county does not guarantee tax certificates sold by it.

April 23, 1949—049-177.

MUNICIPALITIES—MURPHY ACT LANDS—NO POWER TO TAX

QUESTION: May a municipality assess its ad valorem taxes against state owned Murphy act lands prior to the date of conveyance by the state as provided by law?

To: *Honorable Carlyle Ausley, Clerk Circuit Court, Ocala, Florida:*

.....

..... the above question should be answered in the negative.

April 29, 1949—049-188.

HOMESTEAD EXEMPTION—PERSONS IN ARMED SERVICES— JUDGMENT OF TAX ASSESSOR

QUESTION: Are servicemen, who re-enlist in the armed forces after being discharged from their wartime service, entitled to homestead exemption from taxation in this state, where such alleged homesteads are not occupied by such servicemen or their families but are either rented during the period of time for which exemption is claimed, or are vacant?

To: *Honorable C. M. Gay, State Comptroller:*

.....

Temporary absence from the homestead in search of health, pleas-

ure, business, education of children and the like will not deprive the homestead of its status as such, even though the claimant may move to another state and may be absent for several years. (*Hillsborough Investment Co. vs. Wilcox*, 152 Fla. 889, 13 So. 2d. 446; *Collins v. Collins*, 150 Fla. 374, 7 So. 2d. 443, text 444; 40 C. J. S. 641-648, Section 164-66; 26 Am. Jur. 120, Section 194).

The question of determining the facts and circumstances concerning the claimant for homestead exemption is necessarily upon the tax assessor. However, if the tax assessor finds that the facts and circumstances are substantially the same as those set out in the letters accompanying the request for opinion, it appears that he would be justified in granting the homestead exemption claim, as there appears a reasonable excuse for the claimant to be absent from his said home. This opinion is partially based upon the necessity of the federal government maintaining armed forces in foreign countries and for that reason this opinion should not be considered as a general precedent in other matters in this connection.

May 20, 1949—049-231.

WARTIME AIRPORT—MUNICIPAL PROPERTY—PUBLIC PURPOSES—ENTITLED EXEMPTION

QUESTION: Where a wartime airport in this state has been conveyed to a municipality, by the United States, and a portion thereof has been leased by the municipality to an individual for commercial and industrial use, is the leased premises, and the improvements thereon subject to county ad valorem taxes?

To: Honorable C. M. Gay, State Comptroller:

.....

Although the property in question may not be actually used for municipal purposes at this time it may still be exempt under Section 192.06, which provides exemption for municipal property "used or intended to be used for public purposes."

In the light of these observations if the airport property in question is found by the tax assessor to be "used or intended to be used for public purposes" the above question should be answered in the negative.

June 13, 1949—049-254.

CLERKS, CIRCUIT COURT—CORRECTION OF ERROR IN DESCRIPTION—TAX DEED

QUESTION: Where, upon application of the holder of a tax sale certificate for sale of the lands described therein for payment thereof, the clerk of a circuit court, in the preparation and execution of the tax deed to be issued, makes an error in describing the lands to be conveyed so that other lands are described instead of the lands sold, does the said clerk or his successor in office have authority to either correct the said tax deed or issue a corrected deed in lieu thereof?

To: Honorable C. M. Gay, State Comptroller:

.....

..... the above question should be answered in the affirmative.

This opinion is limited to the correction of an error in the description of a tax deed issued pursuant to a regular notice of application for tax deed in correct and proper form as provided in and by Section 194.16, Florida Statutes, and should not be taken as authority for correcting an error in such a notice. An error in the description of such a notice would in most cases require a republication of the notice for the full required time in order to constitute due process.

May 31, 1949—049-255.

PROPERTY EXEMPTIONS—LEASES BY OWNER—TAX ASSESSOR
—ENTRIES—TO SHOW—NO RIGHT OF GOVERNMENT
AFFECTED BY ASSESSMENT

QUESTIONS: Are the following classes of lands used in connection with the operation of the intracoastal waterways of this state by the United States subject to taxation by the counties:

1. Lands held and used for purposes of right of way for the canal in question;
2. Lands held under lease to the federal government in perpetuity and used for the deposit of spoil incident to the actual construction or improvement of the canal; and,
3. Lands held under lease to the federal government for terms of years and used for the deposit of spoil incident to the maintenance of the canal after construction and improvement?

To: *Honorable C. M. Gay, State Comptroller:*

.....

As to the lands held and used by the government for purposes of right of way for the canal in question, title to these lands is evidently vested in the government or some governmental agency so as to be entitled to exemption; however, should any reversionary interest remain in an owner the same would probably fall into the next classification so that the discussion of that class of lands would apply.

As to the lands held under lease to the federal government in perpetuity and used for the deposit of spoil incident to the construction or improvement of the canal, title to these lands would seem to be vested in some owner subject to the perpetual rights of the federal government to use the same. The rights of the federal government in and to the lands would have the effect of encumbering them and might by such encumbrance reduce the beneficial value of the lands to the owner, which should be taken into consideration when determining the taxability of such lands and fixing the value of such property for taxation. I know of no statute exempting the reversionary interest of such owners in such lands from taxation. "The mere fact that property is used by the United States as an instrument for effecting its purpose . . . does not relieve such property from state taxation, at least where the local tax presents no obstacle to the execution of the national policy" (51 Am. Jur. 293, section 236).

As to lands held under lease to the federal government for terms of years and used for deposit of spoil incident to the maintenance of the canal, the same rule above mentioned would seem to apply.

In fixing the valuation of the rights of reversion of the owner of property leased as aforesaid the tax assessor should consider the effect of the encumbrance upon the value of the property and make an allowance therefor. If the value of the property is in any way affected by rights granted the government this should be taken into consideration when fixing the value of the interests remaining in the owner.

In making the assessments of the rights and interests remaining in the owner, after the granting of rights to the government, the assessor should make sufficient entries to show that no right, title or interest of the government is to be in any way affected by the said assessment.

July 8, 1949—049-312—049-255.

FEDERAL GOVERNMENT—NAVIGATION DISTRICTS—EXEMPT
TAXATION—OWNER OF FEE TITLE SUBJECT TO TAX
THIS OPINION IS COMBINED WITH—049-255

To: Honorable C. M. Gay, State Comptroller:

The opinion of May 31, 1949 (049-255) in effect holds that the rights and interests of the navigation district and the federal government are exempt from taxation, but that the rights and interests of the owners of the fee are subject to such taxation. . . .

We have read and considered Chapter 15751, Laws of Florida, Acts of 1931; Sections 192.06 and 192.59, Florida Statutes; the case of *Riverside Military Academy v. Watkins*, 155 Fla. 283, 19 So. 2d. 870, and other cases cited in Mr. McCune's brief, and find no reason to depart from the holding in our opinion of May 31, 1949 (049-255).

June 30, 1949—049-303.

COUNTY TAX ASSESSOR—MUNICIPAL PROPERTY—TAX ASSESS-
MENT ROLL—UNEQUAL—VALID—CORRECTION REQUIRED

QUESTION: Where a county tax assessor, in the preparation of the tax assessment roll for the current year, (1) assesses properties within municipalities upon a basis of one-fourth its full cash value and rural property upon a basis of substantially its full cash value, (2) assesses rural lands bordering on highways at a greater percentage of their full cash value than lands not bordering on any highway, (3) assesses properties of like cash values at different percentages of their full cash value, and (4) assesses lands bordering lands in other counties at a different percentage of their full cash values than do the assessors of such other counties in assessing such lands in such other counties; are such tax rolls valid and existing assessments?

To: Honorable C. M. Gay, Comptroller:

.....

Under Section 193.11, Florida Statutes, "the county assessor of taxes shall assess all property at its full cash value.".....

.....

..... I do not think that the tax roll would be invalid and void, but the taxpayer would be obligated to proceed by proper proceeding to compel the tax assessor to make proper assessments. As we are

dealing only with the question of the validity of the tax roll as such, we answer the above question in the affirmative, subject to the right of any interested party or parties to bring proper proceedings within the time allowed by law for the correction of the same. Such assessments are not void and without force and effect, but are subject to correction if a proper proceeding be brought therefor within the proper time.

July 8, 1949—049-313.

**TAXING OFFICIALS—CORRECTION OF ERRORS—TAX ROLLS—
CERTIFICATES—AUTHORIZED**

QUESTION: Where errors are made in the assessment of property on the tax rolls (by the tax assessor), in the equalization of an assessment (by the Board of county commissioners), or in a tax sale certificate (by the tax assessor) may such errors be corrected under the provisions of Section 192.21, Florida Statutes, and if so by whom should such corrections be made?

To: Honorable C. M. Gay, State Comptroller:

.....

From the above and foregoing authorities and statutes it is clear that county tax assessors may, at any time, correct errors made by them in the preparation of the tax roll, whether said roll be in their hands, in the hands of the tax collector or in the hands of the clerk of the circuit court. Tax Collectors and clerks of the circuit court may likewise correct errors made by them in their tax records, so long as no vested right of the owner of the property encumbered by the tax is violated. This seems to answer the above question.

..... Errors made by prior incumbents may be corrected by present incumbents.

August 1, 1949—049-356.

**WIDOW'S EXEMPTION—HEADS OF FAMILY ENTITLED TAX
EXEMPTION \$500.00 ON PERSONAL PROPERTY—CITI-
ZENSHIP NOT REQUIRED**

QUESTIONS: 1. Does a widow have to be a citizen of the State of Florida, as distinguished from a resident, in order to be entitled to a widow's exemption, as provided by Section 9, Article IX, of the State Constitution?

2. Does the head of a family residing in this state have to be a citizen of the State in order to be entitled to the exemption of household goods and personal effects, as provided by Section 11, Article IX, of the State Constitution?

To: Honorable C. M. Gay, State Comptroller:

..... The first and second questions are answered in the negative.

August 17, 1949—049-389.

**TRUSTEES INTERNAL IMPROVEMENT FUND—MURPHY ACT
LANDS—RIGHT-OF-WAY—STATE ROAD DEPT.—POWER
NOT LIMITED BY CHAPTER 25984, ACTS 1949—
LIBERTY COUNTY**

QUESTION: Does Chapter 25984, Special Acts of 1949, have the effect of limiting the power of the Trustees of the Internal Improve-

ment Fund to grant a right-of-way for state road purposes across lands, the title to which became vested in the Trustees by the provisions of Chapter 18296, Acts of 1937 (Murphy Act and amendments thereto)?

To: *Honorable Alfred A. McKethan, Chairman, State Road Department:*

.....
The statutory right of the Trustees of the Internal Improvement Fund to sell or in anywise dispose of lands held by it, title to which was acquired by the state under the provisions of the Murphy Act, is not in anywise limited by the subject special act.

August 23, 1949—049-402.

**TAXATION—INTANGIBLE PERSONAL PROPERTY—TRUST FUND
—CHARITABLE PURPOSES—NO EXEMPTION**

QUESTION: Where a decedent by his last will and testament creates and establishes a trust or foundation fund to be used in establishing one or more hospitals in this state of a charitable or semi-charitable nature, is the intangible personal property held by such trust or foundation as assets for the purposes aforesaid subject to taxation pending the actual establishment of such hospital or hospitals?

To: *Honorable C. M. Gay, State Comptroller:*

.....
Tax exemptions in this state are usually construed against the claimant and in favor of the taxing power in cases of doubt (*Steuart v. State*, 119 Fla. 117, 161 So. 378; *Lummus v. Florida Adirondack School*, 123 Fla. 810, 168 So. 232). There is such doubt as to the right of the claimant to tax exemption, under the above facts and observations, that we feel that the above question should be answered in the affirmative. Until the applicable statutes are construed by the Supreme Court under like circumstances, we feel that such trust estates should be taxed under existing statutes and circumstances.

September 12, 1949—049-432.

**TAX EXEMPTIONS—"RESIDENCE" DEFINED—PERMANENT DOM-
ICILE EXCLUSIVE ALL OTHER PLACES**

QUESTION: What construction should be placed upon the phrase "bona fide resident of the state" (Section 9, Article IX, of the State Constitution), the phrase "head of the family residing in this state" (Section 11, Article IX, of the State Constitution), the phrase "every person who has . . . title . . . to real property in this state and resides thereon and in good faith makes the same his or her permanent home" (Section 7, Article X, of the State Constitution) and the phrase "in the county where the taxpayer resides or has his usual domicile" (Section 199.08, Florida Statutes) and similar provisions as used in the taxing statutes of this state?

To: *Honorable J. N. Lummus, Jr., County Tax Assessor, Miami, Florida:*

.....
In the light of the above and foregoing authorities we are of the opinion that before exemptions from taxation may be granted under §§9 and 11, Art. IX and §7, Art. X, of the State Constitution, that the

claimants must have established their abode in this state with a present bona fide intention of making the same their permanent home. They must have a fixed and definite intention of remaining there and making the same their home permanently, and with no present intention of removing therefrom in the future. A person to be a permanent resident does not have to be a citizen of this state, in fact an alien may have his permanent home in this state (*Smith v. Voight*, 158 Fla. 366, 28 So. (2d) 426).

The above observations seem to answer the above stated question. The question of whether or not intangible personal property owned by a permanent resident of this state; but who is a citizen of some other state or country, is subject to taxation in this state under Chapter 199, F. S., has not been considered or passed upon in this opinion.

October 20, 1949—049-495.

LABOR UNIONS—PROPERTY—USED EXCLUSIVELY AS MEETING PLACE—ENTITLED EXEMPTION—CHAPTER 26337, ACTS 1949

QUESTION: Property owned and occupied by a local labor union and used by the union for a meeting place exclusively has appeared on the tax roll and has three years' unpaid taxes against the same. Is such property exempt from taxation?

To: Honorable Jess Mathas, Clerk of the Circuit Court, Volusia County, DeLand, Florida:

Until the Extraordinary Session of the Legislature of this year real property owned and occupied by a labor union and used for the usual purposes for such a union was not property exempt from taxation under our constitution and laws....

At the Extraordinary Session, in Senate Bill 25-X(49), Chapter 26337 amended Section 192.06, Florida Statutes of 1941, which relates to property exempt from taxation.

.....

The Act does not become effective until December 31, 1949, and the exemption, therefore, does not apply until next year, 1950.

November 9, 1949—049-586.

WESTCOTT PROPERTY—ENTITLED EXEMPTION—§192.06, FLORIDA STATUTES—APPLICABLE

QUESTIONS: 1. Is the property of the Westcott estate, located on the northwest corner of Monroe Street and College Avenue, in Tallahassee, Florida, subject to taxation for ad valorem taxes?

2. If the above question is answered in the negative, then is the right, title and interest of the Diana Shop of Tallahassee, Inc., under their thirty year lease from the trustee of the said property under the Westcott will, subject to taxation for ad valorem taxes?

To: Honorable C. M. Gay, State Comptroller:

.....

..... The said trust and the income therefrom appear to be for some educational or charitable purpose and within the purview of

Section 192.06, Florida Statutes, and Section 1, Article IX and Section 16, Article XVI, of the State Constitution. . . . The first question is, therefore, answered in the negative.

. The second question is, therefore, answered in the affirmative.

. it seems to be proper that we now also determine whether such leasehold interest should be taxed as tangible or intangible personal property.

. we are of the opinion that a lease for a term of years is intangible personal property.

January 18, 1950—050-18.

**TAX CERTIFICATE—CANCELLATION—BOY SCOUT PROPERTY—
EXEMPTION—§192.06, F. S.**

QUESTION: Should Putnam County tax sales certificate No. 949 of 1931, which was issued for the nonpayment of State and county taxes upon a parcel of land, title to which, beginning in 1929, was in the Boy Scouts of America be cancelled?

To: *F. C. Elliot—Trustees of Internal Improvement Fund of Florida:*

.
In view of the above observations, it is my opinion that property owned by the Boy Scouts of America, and used exclusively by them for the purpose for which the organization was created is exempt from ad valorem taxes and that the certificate in question was issued because of an erroneous assessment for 1930 taxes and should be cancelled.

January 28, 1950—050-64.

**INTANGIBLES—NONRESIDENT CORPORATION—BUSINESS SITUS
§§192.01, 199.07, FLORIDA STATUTES 1941**

QUESTION: Under what circumstances are intangible receivables originating in Florida, and owned by nonresident corporations which are duly licensed to do business in this state, subject to our intangible personal property taxing statutes?

To: *Honorable C. M. Gay, State Comptroller:*

.
For intangibles to acquire a business situs, apart from the residence of its owner, they must have become localized in some independent business or investment away from the owner's domicile, so that its substantial use and value primarily attach to and become an asset of the outside business. (*Westinghouse Electric and Manufacturing Company v. Los Angeles County*, 188 Cal. 491, 205 P. 1076.) Where intangibles are used in a business separate and apart from the domicile of their owner so as to become localized as a part of the personal property where such business is located such intangibles acquire what is known as a "business situs" for the purpose of taxation. (*Adams v. Colonial and United States Mortgage Company*, 82 Miss. 263.34 So. 482).

In the light of the above and foregoing authorities the mere fact that a foreign corporation qualified, under Chapter 613, Florida Statutes, to do business within this State is not sufficient to create a business situs in this state authorizing the taxation of the intangibles of that corporation or any of them. There must be something more. The circumstances under which the intangibles of a foreign corporation will acquire a business situs in this state for the purposes of taxation are as outlined hereinabove. It is the duty of the county tax assessors to investigate the facts in each case and apply the above analysis to such facts, then determine therefrom whether or not the intangibles in question have a situs in his county in Florida.

February 14, 1950—050-74.

**DRAINAGE DISTRICT—TAXATION OF STATE LANDS—§§192.08,
298.36, 372.12, 372.19, CON. SECTION 30, ARTICLE IV**

QUESTION: Are the lands of the Game and Fresh Water Fish Commission, lying within the boundaries of the Wahneta Drainage District in Polk County, Florida, subject to the drainage assessments made or to be made by the said drainage district?

To: Game and Fresh Water Fish Commission:

.....

..... we feel that the question probably should be answered in the negative pending an answer by the courts.

In case drainage assessments should be made against the lands by the said drainage district it would probably be advisable that the commission proceed by proper legal proceeding to obtain a court determination of the question.

February 22, 1950.—050-92.

**MUNICIPAL PROPERTY—STATE LANDS—SALE BY CITY—
§192.38, F. S. '41**

QUESTIONS: 1. Where the City of Fort Lauderdale, Florida, pursuant to Section 192.38, Florida Statutes, purchased about 325 lots of land within the said municipality from the state, in 1941 or 1942, may the said municipality now dispose of such lands for a consideration?

2. Should the said City of Fort Lauderdale sell said lots or any of them for a profit, would the state be entitled to share in the said profits?

To: Honorable Fuller Warren, Governor:

.....

In the light of these observations, prima facie, (1) the municipality has authority to dispose of the lands in question for a consideration, and (2) the municipality having purchased all the right, title and interest of the state in and to said lands, under the Murphy Act, the state has no further interest in the lands and is therefore not entitled to share in any profits that might be made by the municipality upon sale of the lands.

April 18, 1950.—050-197.

**TAXATION—EXEMPTIONS—COOPERATIVE ASSOCIATIONS—
MEMBERS—MERCHANDISE—PURCHASE—DISTRIBUTION—
§192.06, FLORIDA STATUTES 1941—NOT WITHIN
PURVIEW OF**

QUESTION: Where students attending an educational institution form a non-profit association or corporation (organized as a non-profit corporation under the laws of this State) the purpose of which is to purchase and distribute to the association members merchandise and other tangible personal property at cost, is such an association or corporation entitled to exemption from ad valorem taxation?

To: Honorable C. M. Gay, State Comptroller:

.....

In the light of the above and foregoing observations we think that the above question should be answered in the negative; unless the tax assessor upon investigation should find that the property of the association or corporation in question is used exclusively and not merely incidentally for educational purposes. From the showing made by the record before us we are inclined to think that any educational purpose of the property is incidental to the main purpose of the association or corporation, and not within the exemption statutes and laws of the state.

April 18, 1950.—050-199.

**TAXATION—MUNICIPAL PROPERTY—PUBLIC UTILITIES PLANT
—LYING OUT OF COUNTY—NOT SUBJECT TO—§192.52,
FLORIDA STATUTES**

QUESTIONS: 1. Where an incorporated municipality purchases real property in a county other than the one in which located, and constructs thereon an electric power generating plant to be used in supplying the said municipality and its residents with electricity, is such property subject to ad valorem taxation by the county wherein it is located?

2. Where such municipality obtains an easement or license over private property for the operation of a power transmission line, from the said power plant to the said municipality, is such power line, and the said lands over which constructed, subject to ad valorem taxation by the county wherein located?

To: Honorable C. M. Gay, State Comptroller:

"The real and personal property of public utilities, owned, operated and controlled by any municipality in the State of Florida, situate, lying and being in a county other than the county in which such municipality is located, shall not be subject to ad valorem or personal taxes in such county." (Section 192.52, Florida Statutes). This statute was construed and upheld, by the Supreme Court of this State, in *Saunders, Tax Collector, v. City of Jacksonville*, 157 Fla. 240, 25 So. 2d 648. The above statute, as construed by the above case, answers the first question in the negative.

.....

In the light of these observations it seems that the property of the municipality (consisting of the power line and the licenses or

easements over real property) are not subject to taxation; however, the lands themselves over which the power line passes are subject to taxation in the name of their owner. If the municipality owns the fee title to any of the said power line right-of-way it would be tax exempt under the above statute. These observations seem to answer the second question.

June 12, 1950.—050-285.

TAXATION—REAL PROPERTY—MOODY BIBLE INSTITUTE—NOT ENTITLED EXEMPTION

QUESTION: Where residents of this State convey real property located in this State to the Moody Bible Institute, an Illinois non-profit corporation, for the purpose of establishing the Hodge Foundation of the said Bible Institute for the Bible and other religious training of persons, is such real property entitled to exemption from taxation in this State?

To: Honorable C. M. Gay, State Comptroller:

.....

In the light of the above observations we do not think that the property in question should be granted exemption until and unless its right to exemption be first determined by a proper proceeding in court. We doubt the right of the owner of the property to exemption, and any such doubts should be resolved in favor of the right to the taxing authority to tax the property. The above question is answered in the negative.

July 10, 1950.—050-331.

TAX EXEMPTION—NON-PROFIT INSTITUTION—HOMES FOR ELDERLY PEOPLE—§192.06, FLORIDA STATUTES

QUESTION: Where a religious organization or church in this State causes a non-profit corporation to be organized in this State for the purpose of owning and maintaining a home for elderly people, who are required to pay a reasonable rental when financially able to do so for their use of the home, is such home entitled to tax exemption under the laws of this State?

To: Honorable C. M. Gay, State Comptroller:

.....

..... It is clear that the non-profit corporation in question is not a part of the church causing it to be organized.

.....

..... if the tax assessor should find that the institution is operated as a non-profit institution for the benefit of aged persons who are not self-supporting or not entirely self-supporting it would appear that it would be entitled to tax exemption. The fact that the institution may charge those able to pay all or a part of their keep would not seem to affect the status of the property to exemption; provided that the proceeds from such payments are used by the institution for charitable purposes, and not for distribution among the members of the corporation or for the payment of unreasonably high salaries. (*Miami Battlecreek v. Lummus, supra*). We are presuming that the property in question is being used as the home wherein the aged persons in question are

maintained and that it is not being rented as income producing property.

Although the evidence before us indicates that the institution is entitled to the exemption claimed it is the duty of the tax assessor to check the facts and apply them to the observations in this opinion. The above observations seem to supply the rules from which the question of exemption of the institution in question may be determined.

July 10, 1950.—050-332.

ORLANDO OSTEOPATHIC HOSPITAL INC.—EXEMPT FROM AD VALOREM TAXES—§§192.06, 193.40, FLORIDA STATUTES

QUESTION: 1. Is the Orlando Osteopathic Hospital, Inc., entitled to tax exemption for its hospital located on Lots 10, 11 and 12, Block "A" Norman Robinson's Amended Plat, an addition to Orlando, Florida?

2. Where taxes have been assessed against an institution, whose property is entitled to tax exemption under Section 192.06, Florida Statutes, and paid by it, may such institution have a refund of such taxes?

To: Board of County Commissioners, Orange County, Orlando, Florida:

The Orlando Osteopathic Hospital, Inc., appears to have been incorporated as a non-profit corporation, under the laws of this State, in July 1941. The institution appears to be operated after the manner of any well conducted hospital; the only difference being that it is operated as an osteopathic hospital instead of as the usual medical hospital. It has its staff of doctors and nurses like an ordinary hospital; however, its doctors are osteopathic physicians and surgeons instead of the ordinary medical physicians and surgeons. Its patients are received as in other hospitals and it maintains an operating room and an outpatient department as does the ordinary hospital. The charter of the hospital requires that it "use and expend all surplus moneys and funds only for the purpose of improving, enlarging and increasing the said hospital and hospital equipment." This hospital is operated and maintained in a manner substantially the same as are other hospitals in Orange County, Florida. We have been furnished with a copy of a letter from the Treasury Department of the United States certifying the right of the said hospital to tax exemption from income taxes. We are advised that over a period of several years the charity patients of the hospital have equaled about twenty-four per cent of the total patient load.

..... It, therefore, appears that if the facts and circumstances above mentioned form a correct summary of the purpose and operation of the said hospital the first above question should be answered in the affirmative. The Board should make a determination of the facts in the case and ascertain whether or not they are substantially as above set out. These observations seem to answer the first question.

The statutes of this State (Section 193.40, Florida Statutes) provide a method for allowing refunds of taxes paid when such payments amount to an overpayment of taxes or a payment when no taxes were due. If the taxpayer feels that it has made payment of taxes when no taxes were due it should proceed in accordance with the said statute.

Should there be any legal questions involved in connection with the said application the State Comptroller would be authorized to request the advice of this office. We, therefore, do not think that the second question should now be answered.

July 11, 1950.—050-333.

MURPHY ACT LANDS—REVERSION—EASEMENTS FOR PUBLIC PURPOSES—SURVIVAL—§192.58, FLORIDA STATUTES, APPLICABLE

QUESTION: Does the reversion of property to the state under the Murphy Act extinguish existing easements for public purposes?

To: Honorable Sherman N. Smith, Jr., City Attorney, Vero Beach, Florida:

.....

In view of the above, it is my opinion that easements for public service purposes which were properly recorded prior to the reversion to the state survive and are of full force and effect.

July 21, 1950.—050-350.

TAXATION—PROPERTY—ASSESSMENTS—REMOVAL OF BUILDINGS—§§192.21, 193.41, FLORIDA STATUTES

QUESTION: 1. Where certain improved real property is assessed in this State for ad valorem taxes, and the improvements are subsequently removed from the lands so assessed for taxes and placed upon other lands, may the taxes assessed on the first of said lands, or any part thereof, be transferred to the lands to which the improvements were moved?

2. Where real property against which ad valorem taxes are assessed subsequently, by action of erosion by the sea, become a part of the submerged lands under the sea, what effect has such facts upon the taxes so assessed?

To: Honorable Lloyd M. Hicks, Clerk, Circuit Court, Bradenton, Fla.:

.....

..... we feel that the first question should be answered in the negative.

.....

Where the sea gradually and imperceptibly encroaches upon land, the riparian owner loses and the government acquires title to the lands so submerged (45 C.J. 533 and 558, Section 203 and 246). It does not seem to be necessary for us to decide the effect of the change of ownership from private ownership to the government, upon the tax, by reason of the encroachment by the sea as aforesaid, the fact that the title to the said lands become vested in the government would prevent the enforcement of the taxes against the lands so long as the title thereto remains in the government (United States v. Alabama, 313 U. S. 274, 61 S. Ct. 1011, 85 L. Ed. 1327, text 1333) in the absence of a statute so providing. These observations seem to be a sufficient reply to the second question.

In preparing this opinion we are presuming that the property in question lies along the gulf and that the lands in question are not lands

within the purview of statutes such as Sections 253.06 to 253.15, Florida Statutes, where such lands have been conveyed by the trustees of the internal improvement fund as islands, sand bars, shallow banks and the like. This opinion should not be extended to such lands.

August 18, 1950.—050-401.

COUNTY COMMISSIONERS—LANDS PURCHASED BY COUNTY—
TAXES ENCUMBERING—CANCELLATION—AUTHORITY—
§192.59, FLORIDA STATUTES

QUESTIONS: (1) Where real property encumbered by the lien for county ad valorem taxes is purchased by the county near the end of the tax year, do the County Commissioners have authority, under Section 192.59, Florida Statutes, to cancel the said taxes and the lien against the property securing them?

(2) If the answer to the above question is in the affirmative, then is such statute constitutional?

To: Honorable W. Homer Smith, County Tax Assessor, DeLand, Florida:

.....
..... The first question is answered in the affirmative.

With regard to the second question, doubtless the Legislature felt that any person selling lands to the county, as well as the Commissioners themselves, would take the taxes into consideration and include them in the price to be paid for the said lands.

..... Taxes against real property, under the present statutes, appear to be nothing more than an in rem charge or lien upon the real property assessed which may be removed from such property by payment; there is no personal obligation on the part of the owner to pay the same. The payment of real property taxes cannot be enforced against the personal estate of the owner or against other lands than those assessed.

The effect of the cancellation of the taxes in question by the Board of County Commissioners under Section 192.59, Florida Statutes, had only the effect of removing the tax lien from public property and had no effect upon any personal liability of the taxpayer to pay the tax in question, as the taxing statutes placed no such personal liability upon him. If Section 192.59, Florida Statutes, should be declared to be unconstitutional, it would have no effect upon the former owner of the lands (in the absence of some agreement on their part to pay the tax), as he has no personal obligation to pay the tax, but would leave county property encumbered with the tax lien which the county could remove only by payment. In the light of these observations we do not deem it necessary that the office pass upon the second question. In this connection it has been the policy of this office not to pass upon the constitutionality of statutes but to leave that question to the courts.

November 21, 1950—050-531.

EDUCATIONAL INSTITUTIONS—RADIO STATIONS OPERATED
FOR PROFIT BY—EXEMPT FROM TAXATION

QUESTION: Where a radio station is operated in this State by an educational institution, not entirely as a part of the institution

and in part for commercial purposes in competition with other radio stations and news publications, is such radio station entitled to exemption from the payment of ad valorem taxes?

To: Honorable C. M. Gay, State Comptroller:

.....

From the limited facts available to me and in the absence of a clear showing that the radio station in question is not operated by the university for educational purposes, I am of the opinion that your question should be answered in the affirmative.

December 8, 1950—050-546.

**WIDOWS AND DISABLED VETERANS—PROPERTY EXEMPT FROM
TAXATION—ARTICLE IX, §9, FLORIDA CONSTITUTION**

QUESTION: Where a naval or army officer is retired, due to age and infirmities of old age, and not to disabilities incurred in action, is he entitled to the ad valorem exemption provided under Section 9, Article IX, of the State Constitution?

To: Honorable C. M. Gay, State Comptroller:

.....

The above question is, therefore, answered in the negative, as it contemplates a disability brought on by the passage of time and the infirmities of old age.

December 21, 1950—050-574.

**TAXATION—HOMESTEAD EXEMPTION—PERSONS DRAFTED
OR CALLED INTO ARMED SERVICES—
§192.14, FLORIDA STATUTES**

QUESTION: Where a resident of this state, duly entitled to and claiming homestead tax exemption on his homestead, is drafted, or being a member of the national guard or of the organized reserves is ordered, into the service of one of the armed services of the United States, and the conditions are such that neither he nor his family may continue to reside upon said property, but there is a continuing intention on his part and that of his family to return to and reside on the said property in the future, and just as soon as the circumstances and conditions will permit, is such resident of this state entitled to homestead exemption from taxation notwithstanding his non-residence upon the property?

To: Honorable C. M. Gay, State Comptroller:

.....

Where it is made to appear by affidavit or otherwise that, because of his military service, a person involuntarily called into the armed services of the United States is no longer able to maintain his homestead and that it will be necessary that he move his family to other quarters, but that such abandonment will be purely of a temporary character occasioned by his service in the armed forces and that he has an abiding intention of returning and again making the same his home after discharge from the armed services. The fact that by reason of entry into the armed services and reduced income it becomes

necessary that the temporary abandoned homestead must be rented should not defeat the right to homestead tax exemption.

In this connection see 1947-8 Biennial Report 194, 195 and 620 (of attorney general's reports); 1945-6 Biennial Report 284; and 1941-2 Biennial Report 162, 165 and 166; *City of Jacksonville v. Bailey*, 158 Fla. 750, 30 So. 2d. 529.

When the above conditions are met by a person involuntarily called into the armed services of the United States he would seem to be entitled to homestead exemption from taxation. Whether or not such conditions exist is a question of fact to be determined in the first instance by the tax assessor. The above question is, therefore, answered in the affirmative, subject however to the above requirements.

TAX ASSESSMENTS AND TAX SALES

August 12, 1949.—049-380.

COUNTY COMMISSIONERS—COUNTY TAX EQUALIZATION BOARD—DUTY TO CORRECT ERRORS IN TAX ROLL—TAX ASSESSOR REQUIRED TO COMPLY WITH

QUESTIONS: 1. What are the jurisdiction, powers and duties of a board of county commissioners when sitting as a county tax equalization board under the statutes?

2. What is the duty and obligation of the tax assessor when the county equalization board makes a change in the valuations upon the tax roll as fixed by him?

3. What is the proper proceeding when the tax assessor fails or refuses to follow the orders and directives of the county equalization board and where he disagrees with the said equalization board as to values of taxable property?

To: *Honorable J. B. Sanders, County Tax Assessor, Cross City, Florida:*

.....

In the light of the above observations we answer the above questions as follows:

1. The county board of tax equalization has authority to correct errors and discrepancies apparent upon the tax roll, and to equalize assessments made by the tax assessor when, *upon application of some interested person*, such assessments are erroneous and not in accord with other assessments. No reassessments may be made by the board upon the pretext of equalization.

2. In the absence of want of jurisdiction apparent from the records of the equalization board the county assessor of taxes should comply with the orders and directions of the said board as to properties equalized as aforesaid.

3. Upon the failure of the tax assessor to comply with and carry out the orders and directions of the board, made in connection with equalization and within the jurisdiction of the said board, his compliance may be enforced by a proceeding in mandamus.

4. The action of the board if deemed erroneous, and there is no want of jurisdiction, may be reviewed by a proceeding in certiorari. It is also possible that it might also be reviewed by a proceeding for a declaratory decree.

August 24, 1949.—049-403.

TAX ASSESSOR—COUNTY BUILDING—BUS FUND—ASSESSMENT FEES—COUNTY COMMISSIONERS AUTHORIZED TO PAY

QUESTION: Where the board of public instruction of a county directs the assessment of a county current school fund of eight and one-half mills and a county building and bus fund of one and one-half mills, by whom should the assessor's fees for assessing the said one and one-half building and bus fund millage be paid?

To: *Honorable C. M. Gay, State Comptroller:*

.....
..... We are inclined to hold that it is a county tax within the purview of Section 193.65, Florida Statutes. The taxes mentioned in the above question should, therefore, be paid by the county commissioners.

November 3, 1949.—049-535.

CENTRAL AND SOUTHERN FLORIDA FLOOD CONTROL DISTRICT—ASSESSMENT—TAXING OFFICIALS—COMPENSATION—§193.65, FLORIDA STATUTES

QUESTION: What compensation are the tax assessors and collectors entitled to for assessing and collecting Central and Southern Florida Flood Control District taxes and assessments?

To: *Central and Southern Florida Flood Control District, West Palm Beach, Florida:*

.....
..... We feel that the reference in the flood control district laws are to the general laws and not to local and special laws. The above question is, therefore, answered by application of said Section 193.65, Florida Statutes, and the compensation in question should be paid pursuant to said section.

January 11, 1950—050-12.

BROWARD COUNTY—ASSESSMENT OF TAXES—§§18, 19, ARTICLE VIII, CON.—CHAPTER 25712, F. S. '41

QUESTION: May the county tax assessor of Broward county, Florida, assess municipal taxes on the county tax assessment roll, where the municipality does not adopt an ordinance requesting said assessment, pursuant to Section 10, Chapter 25712, Laws of Florida, Acts of 1949, until after the first day of January of the year for which assessment is requested?

To: *Honorable C. M. Gay, State Comptroller:*

An examination of the state constitution reveals that there was adopted at the general election in 1948 additional Sections 18 and 19 to Article VIII of the said constitution, which Section 19 provides in part that "from and after January 1, 1950, the county tax assessor

in the county of Broward, State of Florida, shall assess all property for all municipal taxes to be levied in the county by municipalities which by ordinance request their taxes to be so assessed." The constitution fixes no time within which such request shall be made.

.

January 26, 1950—050-40.

TAX ASSESSOR—PURCHASE OF SUPPLIES—USE OF SURPLUS FUNDS—BIDS FOR PURCHASE—APPROVAL FOR PURCHASE—§§193.02, 145.02, 125.08, F.S. '41

QUESTIONS: 1. Is it permissible for a tax assessor to purchase, out of the fees and commissions paid him by the county commissioners, the school board and taxing districts, such items as typewriters and other office machines and equipment necessary for the efficient operation of the tax assessor's office.

2. If such purchases may be made, is it necessary to advertise for bids?

3. If such purchases may be made, is it necessary that the approval of the board of county commissioners be secured?

To: Hon. John W. Booth, Tax Assessor, Alachua County:

.

From the above and foregoing it appears that the purchase of office machines and equipment for the tax assessor's office must be made either pursuant to the budget of the tax assessor's office made, submitted to the state comptroller and approved by him (in accordance with Section 193.02, Florida Statutes) or by the board of county commissioners from funds mentioned in Section 145.05, Florida Statutes, or from the county general revenue fund. This seems to answer the first question.

The second question is answered by reference to Section 125.08, Florida Statutes, which requires that all purchases in excess of \$300.00 be made pursuant to an advertisement for bids. Advertisement would not appear to be required when the purchase is less than \$300.00.

The third question is answered by stating that, unless the purchase of the property in question is provided for in the budget made and approved pursuant to Section 193.02, Florida Statutes, the purchase should be made by the board of county commissioners or under their direction.

February 28, 1950—050-99.

TAX COLLECTOR EARNINGS—PERIOD OF EARNINGS—EARNED COMPENSATION—§193.65, F.S. 1941

QUESTION: Would compensation paid to me during the year 1947 for services rendered in 1946 be considered compensation for the year of 1946 or 1947?

To: Honorable J. J. Milton, Tax Collector, Hamilton County:

.

It is my opinion that under the circumstances, compensation received by you in January 1947 for services rendered in 1946, the de-

layed payment being through no fault of yours, should be counted as compensation for the year 1946 and not for the year 1947.

March 30, 1950—050-158.

SEE OPINION NO. 050-146

**TAXATION—LANDS LEASED FROM FEDERAL GOVERNMENT—
HOUSES CONSTRUCTED BY INDIVIDUALS**

QUESTION: Where a private person, firm or corporation leases certain real property from the Federal Government and places thereon certain housing facilities to be used for rental to individuals, is such property, or the buildings thereon subject to county and municipal ad valorem taxation?

To: Honorable C. M. Gay, State Comptroller:

We do not have before us a copy of the lease or leases in question from the Federal Government, so that we are not advised as to whether the houses to be constructed upon the leased premises become a part of the realty or not, and we are not advised whether the lessee has the authority to remove the houses at the termination of the lease. Neither are we advised as to whether the jurisdiction of the lands in question have been ceded by the state to the Federal Government.

.....

Under the above observations it seems that the lessee holds no real title in and to the lands subject to taxation. The only thing the lessee has in the lands is a leasehold interest which is personal property and not real property. If upon examination and construction of the lease in question it is found that the title to the buildings placed or to be placed upon the lands remains in the lessee, instead of becoming a part of the realty, then such houses would probably be subject to taxation as tangible personal property.

However, should the houses be taxed as personal property as above mentioned, the question of the right of the tax assessor to enter upon the lands to enforce collection of the taxes so assessed might become an issue (see copy of our opinion of April 4, 1949, or Opinion 049-146, hereto attached). We doubt that tangible personal property taxes are within the purview of Title 4, Sections 104 et seq., United States Code, relating to the collection of certain state taxes on federal controlled areas.

.....

In short the question of taxation of the fee in these cases depends upon each individual case and the applicable federal statutes.

April 11, 1950—050-190.

**COUNTY COMMISSIONERS—EQUALIZATION OF TAX ROLLS—
FEES—TAX ASSESSOR—EXCLUSION FROM BOARD
HEARINGS ILLEGAL**

QUESTIONS: 1. Do the boards of county commissioners, when sitting as boards of tax equalization, have the right to request that the tax assessor absent himself from the hearing?

2. Where the county owes the tax assessor for retainage and the tax assessor owes the county excess money in a less amount, does the

tax assessor have to have a bank account to take care of the money at all times?

To: Honorable Lonnie M. Pearce, County Tax Assessor, Lake City, Florida:

Under Section 193.25, Florida Statutes, the county tax assessor is required to complete his tax roll by the time fixed in the statute "on which day such assessor shall meet with the board of county commissioners at the clerk's office of their respective counties for the purpose of hearing complaints and receiving testimony as to the value of any property, real or personal, as fixed by the county assessor of taxes, of perfecting, reviewing and equalizing the assessment. . . ." This statute seems to contemplate that the tax assessor be present during the equalization of the taxes. This being true the tax assessor cannot legally be excluded from such hearings by the board.

.....

Although the statutes do not absolutely require that the fees of the office be kept in a separate bank account there are several reasons why such an account would be desirable. The keeping of such an account might be a protection to the officer in case of loss of such funds through robbery, burglary, or other loss under circumstances that might raise a personal liability of the officer for their loss. These observations seem to be a conditional answer to the second question.

June 12, 1950—050-283—049-535.

EVERGLADES DRAINAGE DISTRICT—TAXES—ASSESSMENTS—
TAXING OFFICIALS—COMPENSATION—§68, CHAPTER
14717, ACTS 1931 APPLICABLE

QUESTION: What is the legal rate of commissions and fees payable to the several tax assessors and collectors, since the enactment of Chapters 25211 and 25420, Sections 7.51-7.53, Laws of Florida, Acts of 1949, for the assessment and collection of Everglades Drainage District taxes and assessments?

To: Honorable Bryan Willis, State Auditor:

.....

..... We find nothing in said Sections 11 of said Chapters 25211 and 25420 sufficient to change the rule announced in the opinion of this office, under date of January 15, 1948, to the State Comptroller (048-24), 1947-48 Biennial Report, 200).

As the enactment of Chapters 25211 and 25420, Laws of Florida, Acts of 1949, does not appear to have made any change in the statutes and laws which provide the compensation for tax assessors and tax collectors for the assessment and collection of Everglades Drainage District taxes and assessments, the above question is answered by stating that the rate of compensation and fees payable to the several tax assessors and tax collectors for assessing and collecting the Everglades Drainage District taxes and assessments remains unchanged by the enactment of said Chapters 25211 and 25420, Laws of Florida, Acts of 1949. In the absence of applicable special or local laws the provisions of Section 68, Chapter 14717, Laws of Florida, Acts of 1931, appear to be applicable.

July 21, 1950—050-351.

PROPERTY—REAL AND PERSONAL—ASSESSMENT—"FULL CASH VALUE" MEANING—§§193.11, 193.22, 199.05, 200.06, FLORIDA STATUTES

QUESTION: What measure of valuation did the Florida legislature intend to adopt by Sections 193.11, 193.22, 199.05 and 200.06, Florida Statutes, requiring that all taxable property in this state be assessed "at its full cash value.?"

To: *Honorable William C. McLean, County Attorney, Hillsborough County, Tampa, Florida:*

.....

The court, in the *Schleman v. Connecticut General Life Insurance Company* case, *supra*, stated "we are fully aware of the difficulty of fixing with certainty the full cash value of property and the great variance in values set by persons of like experience and judgment, all making estimates conscientiously. Because of this inexactitude, considerable leeway should be granted the officials whose duty it is to make assessments and because of his position his valuations should not be easily disturbed." The law contemplates that a wide discretion be accorded to tax assessors in this state in the valuation of property for purposes of taxation. (*City of Tampa v. Palmer*, 89 Fla. 514, 105 So. 115, text 117 and 118 and cases cited).

In Black's Law Dictionary, 3rd. Ed. 286, the term "cash value" is defined as the price an article "would bring at private sale (as distinguished from a forced or auction sale) the terms of sale requiring the payment of the whole price in ready money, with no deferred payments." In 14 C. J. S. 21 the same term is defined as "the value payable in money as distinguished from a price which would be employed as the basis of an exchange; the actual value; the amount at which a property would be appraised if taken in payment of a just debt due from a solvent debtor; the amount of cash for which an article will exchange in fact; the market value; the price which the property will bring when offered for sale by one who desires to sell, but is not compelled to do so, and is bought by one who desires to purchase, but is not compelled to do so; the usual selling price at private sale and not at forced or auction sale . . ." "Cash Value" has been held to be synonymous with "actual values," "clear market value," "fair and reasonable cash value," "fair market value," etc. (14 C.J.S. 22). In 14 C.J.S. 22 the term "fair and reasonable cash value" is defined as the "price which the property would bring at a fair voluntary sale. The phrase has been held to import value in money presently paid, and to exclude a valuation based on credit." "Fair cash value" means the highest price that a normal purchaser, not under peculiar compulsion, will pay at that time to get that thing; fair and reasonable cash price for which property can be sold in the market; the price property will bring in a fair market." (14 C. J. S. 22). "Full cash value" has been held to mean, the amount at which property would be taken in payment of a just debt due from a solvent debtor (*Crocker v. Scott*, 149 Cal. 575, 87, P. 102, text 106), the value for purposes of sale if the property is saleable and not specially valuable to the owner (In *Re: Brewer and Company*, 15 Haw. 29), the saleable value of property rather than what the property is worth to the owner or cost of

reproduction (In Re: Castle, 15 Haw. 1), the market value of a thing in absence of exceptional circumstances giving it an abnormal value (Los Angeles v. Western Union Company, 161 Cal. 204, 118 P. 720, text 721), or fair market value, which is defined as that value which a willing purchaser will pay a willing seller in an open market (Kaiser Company v. Reid, 30 Cal. 2d 610 184 P. 2d 879, text 887). Each of the above definitions seem to contemplate a cash transaction.

Cooley on Taxation, 4th Ed., volume 3, page 2305, section 1145, concerning the question of valuations of real property for taxation says that "the wording of the statutory requirements varies, such expressions as 'actual value,' 'fair value,' 'full value,' 'true value,' 'cash value,' 'actual cash value,' 'fair cash value,' 'true cash value,' being used frequently in the statutes. The limit of valuation for taxation is such value, which generally is held to be the amount the property would bring at a fair private sale. 'Full and true value' has been held different from 'full and true cash value,' but generally these various terms are held to mean practically the same thing. Requiring property to be valued at its fair and reasonable 'cash' value means, it has been held, what the property would sell for in cash, excluding the uncertainty of valuations based on sales wholly or partly on credit."

In the case of the City of Tampa v. Colgan, 121 Fla. 218, 163 So. 577, text 582, the court had under consideration a provision in the charter of the City of Tampa declaring that the "full cash value" of taxable property in said city was a sum equal to fifty per cent of the "fair market value" of the said property, concerning which the said court said:

"By 'fair market value' is meant the amount of money which a purchaser willing but not obliged to buy the property would pay to an owner willing but not obliged to sell it, taking into consideration all uses to which the property is adapted and might in reason be applied. Claringbold v. Neward, 5 Boyce (28 Del.) 507, 94 A. 1102, L. R.A. 1916E, 1101; Metropolitan Bldg. Co. v. King County, 62 Wash. 409, 113 P. 1114, Ann. Cas. 1912C, 943; Branson v. Bush, 251 U. S. 182, 40 S. Ct. 113, 64 L. Ed. 215; Finch v. Grays Harbor County, 121 Wash. 486, 209 P. 833, 24 A. L. R. 644; Donovan v. City of Haverhill, 247 Mass. 69, 141 N. E. 564, 30 A. L. R. 358. Prospective value alone cannot be made the substantive basis of an assessment, but can be considered to the extent that it enters into, or is reflected in, present value. Note 24 A. L. R. 649."

The term "fair market value," as used in the above quotation, appears to have been used in the same sense that the term "full cash value" is used in section 193.11, Florida Statutes.

The last above cited case was referred to in the case of Hillsborough County v. Knight and Wall Company, 153 Fla. 346, 14 So. 2d. 703, text 705, in connection with the valuation of tangible personal property for taxation purposes, as follows:

"The parties in their briefs, have referred to our decision in City of Tampa v. Colgan, 121 Fla. 218, 163 So. 577, 582, agreeing that it is 'the leading case on the question of valuation.' Turning to that opinion we find the statement that the 'value * * *, for purposes of taxation, is to be determined by

taking into account not one, but all, favorable and unfavorable circumstances that would control the admeasurement of its present value were it placed upon the market to be sold by the owner.' There is in the opinion also this language: 'If similar property is commonly bought and sold, the price which it brings is the best test of the value * * *. But where an established market is nonexistent the process of valuation must comprehend not only one but all of the influencing factors going to make up intrinsic value.' Although that case is not entirely analogous, as valuations of land was involved, the principles may well be applied here."

In this state the valuation of real property for the purposes of taxation is to be made as of the first day of January of the year for which the taxes are to be assessed (section 192.04, Florida Statutes). Such property should be assessed at its actual cash value as of said day.

These observations seem to set out the formula, as well as the same may be set out, from which the "full cash value" of real property may be ascertained for the purposes of taxation. There can be no cut and dried rule from which the full cash value of any particular parcel of land may be ascertained. The elements to be considered in evaluating one parcel of land is not necessarily the same as that involved in evaluating other parcels. The valuation of an adjoining parcel of land does not necessarily fix the valuation of lands adjacent thereto.

August 4, 1950—050-378.

MOTOR VEHICLES—SUBJECT TO LEVY FOR TAXES DUE ON OTHER PROPERTY

QUESTION: Are motor vehicles of taxpayers subject to seizure and sale for the payment of delinquent taxes on tangible or intangible personal property taxes, or both?

To: Honorable C. M. Gay State Comptroller:

.....

In the light of the above and foregoing observations the above question is answered in the affirmative.

August 11, 1950—050-392.

COUNTY COMMISSIONERS—PUBLIC RECREATIONAL FACILITIES —EXTENSION—REPAIR—MAINTENANCE—TAXES— CHAPTER 23418, ACTS OF 1945—§193.32, FLORIDA STATUTES

QUESTIONS: 1. Where a special or local act empowers a county to establish recreational facilities for use by the public, with authority to issue bonds in the sum mentioned in said act, may the County Commissioners expend an amount in excess of the authorized bond issue for the establishment of such facilities?

2. Where recreational facilities have been established, as aforesaid, may the County Commissioners levy a tax for the extension, repair and maintenance of such facilities?

3. If the County Commissioners have the power and authority to levy a tax for the extension, repair and maintenance of such facility, is there any limitation on the amount of such tax?

To: Board of County Commissioners, County Court House, Key West, Florida:

.....

Under these observations we feel that the first and second questions should be answered in the affirmative.

.....

In the light of these observations we feel that the third question should be answered by stating that such taxes are limited to such as would, under the circumstances, be reasonable. The question of reasonableness is one to be determined by the County Commissioners, which determination is probably subject to review by the courts upon proper procedure filed.

October 9, 1950—050-483.

**TAX SALE CERTIFICATES—BID OFF BY INDIVIDUALS AT TAX
SALES—REDEMPTION—SECTION 193.56, FLORIDA
STATUTES**

QUESTIONS: 1. Where, pursuant to Section 193.56, Florida Statutes, a tax sale certificate is struck off to an individual in accordance with the statutes, for what period of time does the interest run at the rate bid?

2. Where, pursuant to Section 193.56, Florida Statutes, a tax sale certificate is struck off to an individual on a bid of no interest for the first year, and the tax sale certificate is redeemed prior to the expiration of the first year, does the provision for minimum interest, contained in Section 194.02, Florida Statutes, have any application?

3. Where, pursuant to Section 193.56, Florida Statutes, a tax sale certificate is struck off to an individual on a bid of interest in excess of no interest but less than five per cent per annum for the first year, and the tax sale certificate is redeemed prior to the expiration of the first year, does the provision for minimum interest, contained in Section 194.02, Florida Statutes, have any application?

To: Honorable C. M. Gay, State Comptroller:

.....

1. Where, pursuant to Section 193.56, Florida Statutes, a tax sale certificate is struck off to an individual in accordance with the statutes, under the provisions of Section 193.59, Florida Statutes, the interest at the rate bid runs from the date of the said certificate until April first following.

2. Where, pursuant to Section 193.56, Florida Statutes, a tax sale certificate is struck off to an individual on a bid of no interest for the first year, and the tax sale certificate is redeemed prior to April first following the date of tax sale, the provisions of Section 194.02, Florida Statutes, have no application and no interest may be allowed.

3. Where, pursuant to Section 193.56, Florida Statutes, a tax sale certificate is struck off to an individual on a bid of interest in

excess of no interest but less than five per cent per annum for the first year, and the tax sale certificate is redeemed prior to April first following the date of the tax sale, the provisions of Section 194.02, Florida Statutes, have only a limited application and the interest allowed will not exceed the amount bid which will be considered as the minimum allowed in lieu of the five per cent mentioned in the statute.

December 8, 1950—050-545.

ASSESSMENT—VENETIAN CAUSEWAY—DADE COUNTY—
PURPOSES OF AD VALOREM TAXES

QUESTION: Where the Venetian Causeway is the only roadway, bridge, viaduct or fill, within the purview of Section 7, Chapter 10497, Laws of Florida, Acts of 1925, subject to ad valorem taxes in Dade County, Florida, just what application of the said statutory provision should the county tax assessor make in assessing the said Venetian Causeway for ad valorem taxes?

To: Honorable C. M. Gay, State Comptroller, Tallahassee, Florida:

Said Section 7, Chapter 10497, Laws of Florida, Acts of 1925, reads as follows:

.....

This section appears to be a part of a special or local act and relates to the assessment of taxes for county purposes. Your attention is directed to Section 20, Article III, of the State Constitution, which provides, among other things, that "the legislature shall not pass special or local laws . . . for assessment and collection of taxes for state and county purposes . . ." The application of this constitutional provision to said Section 7 of the 1925 act raises a serious question as to its validity; however, it has not been the policy of this office to pass upon the constitutionality of acts such as this but to leave such questions to the courts.

It seems to us that the intent and purpose of said Section 7 was to provide a regulation to secure a just valuation of the property in question as compared with the assessment placed upon like and similar property in the county. It also provides that the costs and expenses of construction of the causeway was not necessarily an element in fixing its valuation. Under the taxing statutes, and the Constitution, of this State the tax assessor is required to ascertain a just valuation of the causeway. This just valuation would seem to be accomplished when the causeway is valued on the basis of one hundred per cent of its present cash value, that is it should be assessed at its full cash value (see Section 193.22, Florida Statutes). The basis for assessing the causeway should be the same as that used in assessing other real property in the county.

As there are no other "roadways, bridges, viaducts and fills," within the county and within the purview of the said statute, it is impossible to compare the assessment of the causeway with that of other roadways, bridges, viaducts and fills within the county. There being nothing from which such a comparison might be made there is no obligation on the part of the tax assessor to make such a comparison; he is not required to do the impossible.

As the Constitution and statutes of this State contemplate the assessment of all real property in a county at its full cash value (see Section 1, Article IX, and Section 7, Article X, of the State Constitution, and Section 193.22, Florida Statutes), there is serious doubt as to the validity of a statute requiring that one roadway be assessed on a value not exceeding that of another roadway, without regard to any comparison as to such values. It is doubted that such a formula would arrive at a just valuation of the property and its full cash value. This paragraph is to be taken merely as an observation and not as the expression of a definite opinion of this office.

These observations seem to answer the above question as well as the same may be answered.

TAX SALE CERTIFICATES AND TAX DEEDS

May 4, 1949—049-193.

COUNTY COMMISSIONERS—POWER TO RESERVE RIGHT-OF-WAY IN SALES OF TAX FORFEITURE LANDS

QUESTIONS: 1. Do boards of county commissioners in this state have authority, when conveying lands which have vested in the county for nonpayment of taxes, to reserve to the county rights-of-way and easements over the lands so conveyed for roads and highways?

2. If the county commissioners have authority to make the reservations mentioned in the first question, should notice of such reservations be included in the notices of sale of such lands published pursuant to statute?

To: Honorable C. M. Gay, State Comptroller:

..... it seems clear that county commissioners have the authority to reserve "county lands acquired for delinquent taxes" and dedicate the same for rights-of-way in connection with existing county roads and highways. This answers the first question in the affirmative in so far as it relates to existing roads and highways. As the county commissioners also have authority to establish county roads and highways, it would likewise seem that reservations might also be made for roads and highways contemplated and tentatively located but yet to be constructed. This would seem to also answer the first question in the affirmative as to roads and highways contemplated and tentatively located but not yet under construction.

As the notice of sale is intended to give notice of the lands to be sold, it seems that such notice should clearly show that the lands to be sold will not include such rights-of-way. This answers the second question in the affirmative.

July 6, 1949—049-316.

LANDS—FORECLOSURE SALE BY COUNTY—TAX SALE CERTIFICATES—PRIVATE HOLDERS ENTITLED ONLY PRO RATA SHARE

QUESTION: Must the original certificate holder surrender his certificate upon payment to him of a pro rata share of the amount of the bid, or is he entitled to the full face value of the certificate?

To: *Hon. Lawrence Rogers, Attorney, Board of County Commissioners, Kissimmee, Florida:*

..... it is my opinion that the holder of a tax certificate which is more than two years old against land which has been foreclosed and subsequently sold by the county is entitled only to a pro rata share of the proceeds derived from such sale upon surrendering said tax certificate. If the tax certificate covers land other than that foreclosed and sold by the county, then the holder of the certificate should present such certificate to the clerk of the court and the clerk should make appropriate notations thereon.

July 19, 1949—049-328.

**TAX SALE CERTIFICATES—OMITTED TAXES—CANCELLATION—
CHAPTER 25984, Acts 1949—APPLICABLE**

QUESTION: Does Chapter 25984, Laws of Florida, Acts of 1949, also provide for the cancellation or omission of subsequent and omitted taxes in addition to the tax sale certificates expressly mentioned?

To: *Honorable W. G. Larkins, Clerk Circuit Court, Bristol, Liberty County, Florida:*

.....
The above observations seem to answer the above question in the affirmative.

August 1, 1949—049-371.

**CLERKS OF THE CIRCUIT COURT—TAX SALE CERTIFICATES—
VALIDITY—RECORDING—WRITTEN INSTRUMENTS—
§1, CHAPTER 25276, 1949**

QUESTION: Is a notation on the tax sales record in the office of the clerk of the circuit court sufficient to constitute a recording of the transfer or assignment of a tax sale certificate as required by Section 1, Chapter 25276, Laws of Florida, Acts of 1949?

To: *Honorable C. M. Gay, State Comptroller:*

..... the above question is answered in the negative.

November 1, 1949—049-521.

**TAXATION—PROPERTY—CERTIFICATES CANCELLED—WIDOWS
—ENTITLED EXEMPTION—ARTICLE IX, §9,
FLORIDA CONSTITUTION**

QUESTION: Is a widow entitled to the constitutional exemption allowed widows where certificate was issued against property because of failure to file application for exemption?

To: *Hon. Jess Mathas, Clerk Circuit Court, DeLand, Florida:*

An opinion rendered by my predecessor in office is as follows: "November 23, 1942 (042-533)..... It is also my opinion that the exemption is allowable even though not claimed for the years in which the taxes were assessed, if, in fact, the owner was entitled to the exemption."

I concur in this opinion. I believe that the last paragraph in this opinion will answer your question fully.

February 24, 1950—050-94.

**TAX LIENS—WATER CONSERVATION AREA—TAX PAYMENT ON
PART OF PARCEL—SEC. 194.02, F.S. '41**

QUESTION: Will a tax lien attach on part of a parcel of land lying outside a water conservation area on which county tax has been paid for nonpayment of county tax on that part of the same parcel lying within this water conservation area?

To: Mr. F. C. Elliot, Engineer and Secretary, Trustees of Internal Improvement Fund, Capitol:

.....

It is my opinion that a tax lien does not attach to that portion of the parcel in question which lies outside the water conservation area on which county tax has been paid because of nonpayment of county tax on that portion of the parcel which lies within the water conservation area.

March 10, 1950—050-118.

**COUNTY TAX FORECLOSURE LANDS—SALES—MUNICIPAL
TAXES—§194.55, F. S. '41—APPLICABLE**

QUESTIONS: 1. Where a county under the provisions of Section 194.47, Florida Statutes, 1941, as the same was amended by Section 13, Chapter 22079, Laws of Florida, Acts of 1943, foreclosed tax sale certificates for 1940, 1942 and 1943, encumbering certain lands, final decree having been entered on October 4, 1945, and subsequently sold and conveyed the said lands, what was the effect of the said foreclosure and sale upon any municipal taxes also encumbering the said lands?

2. When lands are foreclosed for taxes and sold as aforesaid, what disposition should be made of the proceeds from such sale?

3. Where, notwithstanding county tax foreclosure and sale as aforesaid, a municipality collects the amount of the municipal taxes encumbering the said lands, what disposition should be made of the moneys so collected?

To: Honorable Thelma Lewis, Clerk Circuit Court, Jasper, Florida:

.....

There has been no substantial change in the statute since the 1943 amendment in so far as the county and municipal taxes are concerned.

In the light of these observations, unless there has been a material change in a municipal charter since 1943, sufficient to repeal the above provisions of the Florida Statutes, it seems clear that the foreclosure of the delinquent taxes in question and the sale by the county divested any tax liens encumbering the said property for general municipal taxes (improvement assessments are not considered as general municipal taxes). These observations and the above quoted statute answer the first question.

The above quoted provision from Section 194.55 answers the second question and sets out the method for the clerk making distribution.

It would seem to us that where the lien for municipal taxes is divested by a sale by the county, under the provisions of Section 194.55, Florida Statutes, above quoted from, and the municipality being entitled to distribution of a portion of the sales price under the said statute, that any collections of such municipal taxes would be illegal, and being illegal, should be refunded to the person paying the said taxes. This is true because the sale of the lands by the county had, under the statute, the effect of satisfying or abolishing the taxes due. This seems to answer the third question.

April 1, 1950—050-170.

**COUNTY TAX DEED—PROPERTY IMPROVEMENTS—SUMS PAID
FOR—REFUND—§§194.28, 194.55, 194.56, FLORIDA STATUTES**

QUESTION: Where the title property not subject to taxation comes into the county for delinquent taxes and the county subsequently sells the property to an individual pursuant to the provisions of Sections 194.55 and 194.56, Florida Statutes, 1941, the individual thereafter erecting improvements thereon, is the purchaser entitled to a refund of the sums paid for the purchase of the property, and in addition the value of the improvements placed thereon?

To: Honorable James W. West, County Attorney, Bushnell, Florida:

.....
Hence, the question should be answered in the negative.

May 4, 1950—050-229.

**TAX SALES CERTIFICATES—ASSIGNMENT—ADVERTISEMENT
ON OR BEFORE JUNE 9, 1939—NOT TO REVERT
TO STATE OF FLORIDA**

QUESTION: Where a tax sales certificate was properly advertised and sale made on or before June 9, 1939, should this certificate revert to the State of Florida when assignment was made subsequent to June 9, 1939?

To: Honorable Lloyd M. Hicks, Clerk of Circuit Court, Bradenton, Florida:

.....
It is my opinion that where the advertisement and sale were made according to the provisions of the above quoted acts, even though the sale was on June 9, 1939, and the balance of the bid price was paid within 90 days of that date that assignment should have been made by the Clerk of the Court and that the certificate should not revert to the State of Florida.

May 9, 1950—050-233.

**TAX SALES CERTIFICATES—COUNTY OWNED—FORECLOSURE—
REDEMPTION—§194.47, FLORIDA STATUTES APPLICABLE**

QUESTIONS: 1. Where a county held tax sale certificate is more than two years old, and the time for county foreclosure has arrived

but no foreclosure proceedings have been instituted as provided by statute, may the lands encumbered by the said tax sale certificate be redeemed from the lien of the said certificate?

2. If the above question is answered in the affirmative, please advise the method of calculating the amount or amounts necessary for redemption of the lands from the tax lien?

To: Honorable C. M. Gay, State Comptroller:

.....
..... In the light of these observations the first question should be answered in the affirmative.

.....
Under the above cited and quoted statutes it appears that interest upon county held tax sale certificates should be calculated as follows: (1) interest at the rate of eighteen per cent per annum, from April the first of the year following the assessment of the taxes until the date of the tax sale, should be included in the tax sale certificate; (2) the tax sale certificate itself bears interest on the face amount thereof at the rate of eighteen per cent per annum, from the date thereof until the first of April following, and thereafter until paid at the rate of eight per cent per annum; and (3) subsequent and omitted taxes, attached to the said tax sale certificate, bear interest, beginning with the first day of April following the assessment of the taxes, at the rate of eighteen per cent per annum for the first year and eight per cent per annum thereafter until paid. To these amounts should be added necessary costs in connection with the redemption or purchase. These observations seem to answer the second question.

June 12, 1950—050-286.

BALDWIN DRAINAGE DISTRICT—SALE OF TAX DELINQUENT
LANDS—PROCEEDS— DISTRIBUTION—DIVISION
CHAPTER 194, FLORIDA STATUTES—
DUVAL COUNTY

QUESTION: Where title to lands within the Baldwin Drainage District, in Duval County, Florida, was vested in the county, by virtue of Section 194.47, Florida Statutes, and sold by said county pursuant to statute, what disposition should be made of the proceeds of such sale when there were delinquent drainage taxes encumbering the said lands at the time of sale?

To: Honorable J. Henry Blount, County Attorney, Jacksonville, Duval County, Florida:

The determination of this question seems to involve the Florida Statutes, 1941, statutes and laws relating to the Baldwin Drainage District, and amendments of the Florida Statutes. We seem to have involved Sections 194.47 et seq., Florida Statutes, 1941, and amendments made to said statutes by Chapters 22079, 22772 and 24206, Laws of Florida, Acts of 1943, 1945 and 1947.

.....
Under the above construction of the several applicable statutes, we find that the proceeds from the sale of county tax delinquent lands, where also encumbered by drainage district liens equal in dignity to the county tax lien, are divided into the following classes:

1. The proceeds from the sale of tax delinquent lands acquired by the county pursuant to either Chapter 20722, Laws of Florida, Acts of 1941, or Section 194.47, Florida Statutes, prior to its amendment in 1943, which proceeds, without regard to the date of the sale of said lands by the county, should be distributed in accordance with Section 194.55, Florida Statutes, as the same existed prior to its amendment in 1943.

2. The proceeds from the sale of tax delinquent lands acquired by the county pursuant to Section 194.47, Florida Statutes, as amended in 1943, which proceeds, if the lands were sold by the county prior to the effective date of Chapter 24206, Laws of Florida, Acts of 1947, should be distributed in accordance with Section 194.55, Florida Statutes, as amended in 1943; but, if the lands were sold by the county after the effective date of said Chapter 24206, by reason of Section 3 of said chapter (see Subsection (8) of Section 194.55, Florida Statutes, 1949, the said proceeds should be distributed in accordance with Section 194.55, Florida Statutes, as amended in 1947.

3. The proceeds from the sale of tax delinquent lands acquired by the county pursuant to Section 194.47, Florida Statutes, as amended in 1947, which proceeds should be distributed in accordance with Chapter 24206, Laws of Florida, Acts of 1947 (or Section 194.55, Florida Statutes, 1949).

Tax delinquent lands sold by the county prior to the effective date of Chapter 24206, Laws of Florida, Acts of 1947, were sold subject to drainage district tax liens (see Section 194.53, and subsection (4), Section 194.55, Florida Statutes as amended in 1943) but after the effective date of said Chapter 24206, were sold free and clear of such liens (see Section 194.53 and Subsection (4) of Section 194.55, Florida Statutes, 1949). The above observations seem to answer the above stated question.

June 12, 1950—050-287.

**TAX SALES CERTIFICATES—INDIVIDUALLY HELD—LIMITATIONS—TITLE VESTS IN COUNTY—§194.55 (8)
FLORIDA STATUTES APPLICABLE**

QUESTION: Where a tax sale certificate of the tax sale of 1928 was purchased by an individual, who assigned the same to its present owner in 1939, but the lands encumbered by the said tax sale certificate became subsequently vested in the county by reason of delinquent taxes, title having been confirmed in the county in 1944, is the holder of such tax sale certificate entitled to share in the proceeds received from the sale of said lands by the county?

To: Honorable John C. Blocker, County Attorney, St. Petersburg:

.....

We, therefore, think that the above question should be answered in the affirmative, unless the tax sale certificate in question was more than twenty years old at the time of the foreclosure by the county. It seems evident that the foreclosure was completed within the twenty year period.

September 27, 1950—050-455.

CLERKS CIRCUIT COURTS—DUTIES—APPLICATION FOR
TAX DEEDS

QUESTION: Should a clerk of the circuit court accept an application for a tax deed, when the tax sale certificates appear valid upon their face and from the tax rolls, when such application is made by a person known to the said clerk to be the holder of a mortgage encumbering the same lands?

To: *Honorable Leamon Q. Varn, Clerk Circuit Court, Brooksville, Florida:*

.....

Although the above authorities appear to cast doubt upon the validity of the tax sale certificates in question and their sufficiency as a basis to support a tax deed application, we find nothing in the statutes and laws of this State requiring, or even contemplating, that the clerks of the circuit courts shall act judicially in the issuance of tax deeds and determine such legal questions. The determination of the validity of a tax sale certificate, when the invalidity does not appear from the said certificate or the tax proceedings, from evidence dehors the record, does not appear to be one of the duties of a clerk in connection with applications for tax deeds.

..... we feel that it is the duty of a clerk of the circuit court to accept applications for tax deeds, unless the invalidity of the tax sale certificate in question is apparent from its face or from the taxing records, notwithstanding any other personal knowledge on his part which indicate, from matters dehors the record, that there may be some question of the validity of the tax sale certificate in question.

August 23, 1950—050-411.

MUNICIPALITIES—ASSESSMENT ROLLS—PINELLAS COUNTY—
CHAPTER 26160, ACTS 1949, APPLICABLE

QUESTIONS: 1. Are we correct in setting the deadline as August 26th for St. Petersburg Beach to assess taxes where the tax assessment roll has been certified to the municipality on July 26th, 1950?

2. About six other cities have so far, failed to give us their millage. Should they fail to give us their millage by August 26th, what shall this office do with the Tax Roll? We cannot proceed until this millage is given us. We cannot complete the tax roll on schedule unless we are permitted to start this work in the near future, by September 1st at most.

To: *Honorable C. M. Gay, State Comptroller:*

.....

..... If the Tax Assessor certified to the City of St. Petersburg Beach the equalized tax assessment roll for that municipality on July 26, 1950, the deadline which he has set for August 26, 1950, comes within the purview of Chapter 26160 and is correct.

..... It has been held by our courts that it is the continuing duty of the taxing officials to hold open assessment rolls so millage can be determined, but not to such extent as will delay the collection

of taxes. The provision in Section 3, Chapter 26160, Laws of Florida, Acts of 1949, requiring that municipalities certify their millage to the tax assessor within thirty days after notice is given by him, appears to be mandatory and must be followed by the municipalities. If the millage is not certified within said thirty days, then it is not mandatory on the tax assessor to extend on his assessment roll the taxes for the municipality so in default. We do not mean to hold that the assessment roll would be void should the Tax Assessor at his discretion include millage given him after the thirty-day period of time. However, as far as the municipality is concerned said period of time is mandatory.

TAXES ON RAILROADS, ETC.

May 18, 1949—049-219.

RAILROADS—ROLLING STOCK—ASSESSMENTS—DRAINAGE DISTRICT TAX

QUESTIONS: 1. Is the rolling stock of a railroad certified to a county by the state comptroller for assessment under the laws of this state, subject to a tax in that county assessed by a drainage or similar district?

2. If such rolling stock is not subject to such tax may the state comptroller direct the taxing authorities of the county to make adjustments of the said drainage taxes so as to omit such rolling stock and other personal property of the railroad assessed in that county?

To: *Honorable C. M. Gay, State Comptroller:*

.....

It, therefore, appears that the first question should be answered in the affirmative. The first question being answered in the affirmative the second question need not be answered.

COURT PROCEEDINGS RELATING TO TAXATION

July 1, 1949—049-290.

TAX ASSESSOR—LITIGATION—COUNTY ATTORNEY REPRESENTING—COMPENSATION FROM GENERAL FUND

QUESTION: Where a suit is brought, by an individual, against the tax assessor of a county for the purpose of cancelling or contesting a tax, who should represent the tax assessor and from what funds should he be paid?

To: *Honorable J. W. Hunter, Attorney for County Commissioners, Lake County, Tavares, Florida:*

.....

The applicable provision of the statute is Section 196.14, Florida Statutes, as amended in 1943, if the proceeding related to taxes upon real property, and Section 200.40, Florida Statutes, if the proceeding related to tangible personal property. These statutes seem to contemplate that the regularly employed county attorney represent the interests of the county in such litigation and that he be paid from county funds, which would seem to be from the general fund of the

county in most cases. His compensation should be approved and paid by the county commissioners. He may be paid only fees lawfully allowed by the county commissioners. This seems to answer the above question.

TAX COLLECTION AGENCIES

April 4, 1949—049-146.

MILITARY RESERVATION—DADE COUNTY—TAXES AGAINST CIVILIAN TENANTS—COLLECTION

QUESTION: May the tax collector of Dade County, Florida, enter upon the United States Naval Air Station lands, at Opa Locka, Florida, for the purpose of enforcing the collection of taxes assessed against property of civilian tenants upon the said lands?

To: Hon. C. M. Gay, State Comptroller:

.....

The Surplus Trading Company case raises grave doubts as to the right of the county to levy the taxes in question. Without any right to tax there is doubt of the right of the tax collector to attempt enforcement of an invalid tax. In the light of these observations we answer the above question in the negative subject to the right of the county taxing officials to attempt to reach an accord with the department of the navy upon the question.

As a practical suggestion it might be possible to obtain from the commanding officer of the air station permission to assess and collect the taxes in question; if such permission is refused by the commanding officer of the station application might be then made to the commanding officer of the district or to the department of the navy in Washington.

September 27, 1950—050-458.

TAX COLLECTION AGENCY—AGENT OF OTHERS—PAYMENT— LICENSES AND LICENSE TAXES—REVENUE PURPOSES —CHAPTER 197, FLORIDA STATUTES

QUESTION: May a "tax collection agency" licensed under Chapter 197, Florida Statutes, act as the agent of others in the payment of licenses and license taxes, including motor vehicle licenses and drivers' licenses?

To: Honorable C. M. Gay, State Comptroller:

.....

In the light of these observations it appears that a "tax collection agency" licensed under Chapter 197, Florida Statutes, may act as the agent of others in the payment of licenses and license taxes, when the license or license tax was imposed for revenue purposes; but not when such license or license tax was imposed for purposes of regulation. Motor vehicle licenses appear to be within the statute but it is doubted that fees imposed for drivers' licenses are within the statute.

INTANGIBLE PERSONAL PROPERTY TAXATION

January 13, 1949—049-26.

INTANGIBLE PERSONAL PROPERTY TAX EXEMPTION—LEGACIES TO COLLEGES IN AND OUT OF STATE—SPECIAL PRIVILEGES DURING ADMINISTRATION

QUESTION: Where a decedent, by last will and testament, bequeathed certain intangible personal property to two colleges, one within this state and the other in another state, is such intangible personal property entitled to exemption from taxation while in the hands of the personal representative and prior to the time for distribution?

To: Honorable C. M. Gay, State Comptroller, Tallahassee, Florida:

.....

In the light of the above and foregoing observations we are of the opinion that the above stated question should be answered in the negative.

May 3, 1949—049-198.

CORPORATIONS—CORPORATE STOCK—TREASURY STOCK—TAXATION

QUESTION: Where a business corporation operating in this state holds shares of its own capital stock as treasury stock, is such stock subject to the provisions of 199, Florida Statutes, as intangible personal property held by the said corporation?

To: Honorable C. M. Gay, State Comptroller:

.....

In the light of the above and foregoing observations it seems that the above question should be answered in the affirmative. Such stock seems to be intangible personal property subject to taxation, under Chapter 199, Florida Statutes, in the hands of the corporation as owner.

July 23, 1949—049-336.

CORPORATIONS—EDUCATIONAL INSTITUTIONS—EDUCATIONAL PURPOSES—ENTITLED EXEMPTION—ARTICLE XVI, §16, STATE CONSTITUTION

QUESTION: Where an educational institution in this state, entitled to tax exemption under the statutes and laws of this state, is indebted to a business corporation in a sum certain, which indebtedness is evidenced by an instrument in writing, but later acquires all the outstanding stock of such business corporation, is such indebtedness subject to the intangible personal property tax laws in this state?

To: Honorable C. M. Gay, State Comptroller:

.....

..... If the indebtedness (evidenced by instruments in writing) in question is so "held and used exclusively for . . . educational . . . purposes," within the purview of Section 16, Article XVI, of the State Constitution, it would be entitled to exemption without regard to the

character of the owners and holders of its corporate stock. The fact that the stock of the corporation in question is held by an educational institution is not an element in determining the right to exemption, the only question is the use of the property in question. If the tax assessor finds that the property in question is "held and used exclusively for . . . educational . . . purposes," within the purview of Section 16, Article XVI, of the State Constitution, he should grant exemption without regard to the ownership of the stock of the business corporation.

August 22, 1949—049-400.

INTANGIBLE PERSONAL PROPERTY TAX—ACCOUNTS RECEIVABLE—VALUATION—DETERMINATION—METHOD OF ASSESSMENT

QUESTION: In the determination of the taxable value, under the intangible personal property tax statute, of accounts receivable which are assets of a dealer and broker in investment securities, may the aggregate amount of such accounts receivable be reduced by the deduction therefrom of the aggregate amount of accounts payable owed by such dealer on the date of the valuation of the receivables for assessment of intangible personal property tax?

To: *Honorable C. M. Gay, Comptroller:*

.....

Full consideration of the question presented requires an answer in the negative.

September 6, 1949—049-422.

ESTATES OF DECEDENTS—INTANGIBLE PERSONAL PROPERTY—LOCATED IN ANOTHER STATE—TAXABLE IN FLORIDA

QUESTION: "Please advise me whether or not the intangible personal property belonging to the above estate which was situated in the State of New York at the time of his death and is now being administered by the Chemical Bank and Trust Company, as the New York executor, is taxable under the Florida intangible personal property tax law during the period of the administration and until distribution is made to the trustees, as provided in the will?"

To: *Honorable C. M. Gay, State Comptroller:*

.....

I feel that in answer to Mr. Cain's inquiry as to whether or not the intangibles belonging to this decedent, and situated in New York City and now in the custody of the New York Executor, are taxable in Florida under the Florida Intangible Personal Property Tax law during the period of the administration of this Estate and until distribution is made in accordance with the will, should be answered by the statement that such intangibles are taxable under the Florida Intangible Personal Property Law now and at all times until distribution of the estate is made in accordance with the will, and until the title passes out of Mr. Reisinger's estate.

The statement of the Counsel for the executor of what is called the "New York" estate to the effect that Mr. Reisinger's will created

two separate and distinct estates vanishes before the reflection that they were both Mr. Reisinger's estate and he being a citizen and resident of Florida they were both and still are subject to the intangible tax.

The issuance by the New York Surrogate of original and not ancillary letters, does not disturb Mr. Reisinger's ownership of the property or that of his Florida executor, or Florida's right to tax.

From the foregoing, it is my opinion that the reply to Mr. Cain's letter should be as hereinbefore indicated, and that a vigorous effort should be made to collect the tax upon the entire estate.

December 2, 1949—049-577.

INTANGIBLE PERSONAL PROPERTY TAX—ACCOUNTS RECEIVABLE

QUESTION: Is the amount of money payable by the United States, to a manufacturing corporation in reimbursement of advances made by the manufacturer for the account of the United States, in connection with the fabrication and manufacture of supplies for the government, an account receivable, taxable as intangible personal property, owned by the manufacturer, under the provisions of Chapter 199, Florida Statutes, 1941?

To: Honorable C. M. Gay, State Comptroller:

.....

The question is accordingly answered in the negative.

May 8, 1950—050-232.

TAXATION—INTANGIBLE PERSONAL PROPERTY—MUNICIPALITY—COUNTY—STATE—CORPORATION—NOTES—ACCOUNTS RECEIVABLE—INDEBTEDNESS—SUBJECT TO CHAPTER 199, FLORIDA STATUTES

QUESTION: Are notes and accounts receivable evidencing indebtedness owing by a municipality, county or state to a corporation intangible personal property subject to tax under the provisions of Chapter 199, Florida Statutes 1941?

To: Honorable C. M. Gay, State Comptroller:

.....

In the absence of a statute or constitutional provision, particularly exempting the class of notes referred to in your question from taxation, the question is answered in the affirmative.

TANGIBLE PERSONAL PROPERTY TAXATION

May 17, 1949—049-218.

BOATS IN WITHLACOOCHIEE RIVER—SITUS IN CITRUS OR LEVY COUNTY?—§§7.09, 7.38, 200.44 F. S.

QUESTION: Where boats are anchored or kept in slips or basins, or along docks or piers, constructed along the north shore or bank of the Withlacoochee river, between Citrus and Levy counties, Florida, are such boats subject to taxation by said counties or either of them?

To: *Honorable Hugh C. Barco, Tax Assessor, Citrus County, Inverness, Florida:*

We are advised that many of these slips, basins, docks, or piers, or maybe all of them, have been constructed, either by dredging, digging or otherwise, so that they project into the north bank or lands adjacent to the said river on the north.....

..... The boundary line between the said counties is *the north bank* of the said river. Taxable property having a situs south of the said north bank of the said river would seem to be taxable in Citrus county and that having a situs north of the said north bank would be taxable in Levy county.

..... I am of the opinion that the dredging or digging of slips, basins or other area from the waters of the said river into the lands on its north bank did not change the common boundary between the two counties and that such slips, basins and other areas would be in Levy county, Florida. Boats stored in such slips, basins and other areas would be in Levy county and not in Citrus county. If any of the boats in question are kept on the river proper instead of within such slips, basins and other areas they would be in Citrus county.

Although a boat may be registered in some other county or state it may acquire taxable situs in this state or another county (*Bush v. State*, 140 Fla. 277, 191 So. 515); however, such boats as pay a tax in the state where registered or are exempt from taxation therein are not subject to taxation in this state (Section 200.44, Florida Statutes).

The above observations seem to answer the above question.

June 29, 1949—049-298.

**TAX COLLECTOR—DELINQUENT AD VALOREM TAXES AGAINST
NONRESIDENT—AUTHORITY TO COLLECT**

QUESTION: Does a county tax collector in this state have any duty and authority to institute proceedings in another state for the collection of a delinquent tangible personal property tax, when the property taxed has been removed from the state and the owner thereof has no other property in this state from which collection might be enforced?

To: *Mr. L. C. Kickliter, County Tax Collector, Stuart, Florida:*

.....

There is serious doubt as to the authority of a tax collector of this state to go into the courts of another state (in the absence of statutory authority in such state) to enforce a tax levied and assessed in this state (51 Am. Jur. 869, section 993); however, this seems to be a question for the courts of the state wherein collection might be attempted and not one under the statutes and laws of this state.

Our primary question is the authority of the tax collector, or other county authority, of your county to proceed in the courts of another state for the purpose of attempting the enforcement of the tax due. No part of the tax in question is a state tax (see Section 2, Article IX, State Constitution) so the state is not interested in the

collection and does not seem to be a proper party to such a proceeding. The proceeding if brought must be by either the county tax collector or the county itself. There is no statute of this state expressly authorizing such a proceeding.

.....

We, therefore, answer the question in the affirmative, conditioned upon the observations and requirements above mentioned.

July 8, 1949—049-310.

LANDS—TRUSTEES INTERNAL IMPROVEMENT FUND—PERSONAL PROPERTY—SUBJECT COUNTY TAX—CHAPTER 25214, §3, ACTS 1949—HOMESTEADS EXEMPT

QUESTIONS: 1. Is tangible personal property subject to the tax imposed by Section 3, Chapter 25214, Laws of Florida, Acts of 1949?

2. Are homesteads subject to the tax imposed by said Section 3 of Chapter 25214?

In addition to the questions posed by your request for an opinion of this office there appears to have arisen with certain county officials the following further question:

3. Are the lands of the Trustees of the Internal Improvement Fund subject to the tax imposed by said Section 3 of Chapter 25214?

To: Honorable C. M. Gay, State Comptroller, Tallahassee, Florida:

..... The first question is, therefore, answered in the affirmative. Intangibles are only subject to a state tax and not to a county tax.

..... The second question is, therefore, answered in the negative.

The third question is answered in the affirmative.....

August 10, 1949—049-367.

PROPERTY—TANGIBLE PERSONAL—DELINQUENT TAX LIST—PUBLICATION LEGAL—TAYLOR COUNTY

QUESTION: May personal property which should have been advertised for payment of delinquent taxes (determination of taxes due having heretofore been ascertained) on April 15th, be advertised at a later date of the same year?

To: Honorable H. G. Hiers, Tax Collector, Perry, Florida:

Assuming that your question relates to tangible personal property taxes, the answer is found in Section 200.02, Florida Statutes.....

.....

It is my opinion, subject to the aforementioned assumption that the property in question is tangible personal property, that your question is answered in the affirmative.

September 22, 1949—049-449.

AD VALOREM PERSONAL PROPERTY TAX—LIQUOR—WHOLESALE STOCK—ASSESSMENT—FULL CASH VALUE—FEDERAL TAX INCLUDED

QUESTION: In assessing ad valorem personal property taxes on a stock of liquor owned by a wholesaler, should the federal tax on such

liquor be included in determining the full cash value of the personal property?

To: Honorable C. M. Gay, State Comptroller:

.....

The federal tax on liquor is paid by the producer or distiller and is merely added to the cost of the product when sold to the wholesaler and in turn passed on by him as a portion of the cost of the product to the retailer. No federal tax is imposed upon or paid by the wholesale liquor dealer and therefore it is my opinion that your question should be answered in the affirmative.

March 22, 1950—050-139.

**CORPORATIONS—FEDERAL BONDS—CORPORATE STOCK—
INTANGIBLE PERSONAL PROPERTY—TAXES LEVIED**

QUESTION: Should the tax assessor take into account any tax exempt federal securities owned by a corporation, when determining the value of corporate stock issued by such corporation, for intangible personal property taxation against owners and holders of such stock?

To: Honorable C. M. Gay, State Comptroller:

.....

In the light of the above observations and authorities we answer the above question in the negative. The decisions of the Supreme Court of the United States seem to draw a distinction between the taxation of the capital, surplus, profits or other assets of a corporation and the taxation of the outstanding capital stock of such corporation as intangible personal property of the owners of such corporate stock.

November 22, 1949—049-562.

**MOTOR VEHICLE TRAILERS—HELD FOR SALE—BY RETAIL
DEALERS—TANGIBLE PERSONAL PROPERTY TAXES
—NOT SUBJECT TO**

QUESTION: Are unlicensed motor vehicle trailers, in the hands of retail dealers and unsold by them on the first of January in any tax year, subject to tangible personal property taxes under the laws of this state?

To: Honorable C. M. Gay, State Comptroller:

.....

..... The above question is, therefore, answered in the negative, unless it is apparent that such trailers are to be used for purposes other than transportation.

July 24, 1950—050-356.

**TANGIBLE PERSONAL PROPERTY—REMOVAL FROM STATE—
ASSESSMENT—UNPAID TAX—SEIZURE—CONTINENTAL
CAN COMPANY—POLK COUNTY**

QUESTION: Where certain tangible personal property is assessed for taxes in one of the counties of this State, where it was located on January first of the tax year, but is subsequently removed to another

state or country, may the taxes so assessed be enforced against other property of the owner of the assessed property?

To: Honorable C. M. Gay, State Comptroller:

.....

Under the statutes the assessment of the said tangible personal property constituted "a lien on all the personal property of the taxpayer in the county in which . . . assessed from the first day of January for which year the property is liable for assessment." (Section 200.02, Florida Statutes). Any property of the taxpayer (Continental Can Company) in Polk County, Florida, if any, would seem to be subject to seizure for the said unpaid tax. (Section 200.27, Florida Statutes). The tax warrant issued pursuant to said Section 200.27, Florida Statutes, may also be levied as a writ of garnishment against any person, firm or corporation owing money to, or having in their possession any property of, the said Continental Can Company in Polk County, Florida. This seems to dispose of the question in so far as Polk County is concerned.

As the property appears to have been removed from the State and not to another county it is doubted that the first part of Section 200.30, Florida Statutes, has any application; however, the latter part of said section provides that "all taxes assessed upon tangible personal property, from the date said taxes become due, shall have the force and effect of a judgment and execution at law against the owner of said property, except the same shall not constitute a lien on the real property of such owner." Section 193.49 Florida Statutes, provides in part that "in case any personal property upon which the taxes may have been assessed is removed from the county in which said property was assessed, it is lawful for the tax collector of the county by his warrant, to authorize the sheriff of the county within this state to which such person shall have removed, or in which he shall reside, and such sheriff may proceed thereon as upon execution from the circuit court." This section would seem to authorize the issuance of a tax warrant, by the tax collector of Polk County, Florida, to the sheriff of the county wherein the above corporation resides for the collection of the said tax. Although Section 193.49, Florida Statutes, may have been repealed in part by Section 200.30, Florida Statutes, we do not think that it was repealed in toto. We do not think that the above quoted language from Section 193.49, Florida Statutes, is in conflict with said Section 200.30, Florida Statutes, or that it was repealed by the adoption of said Section 200.30. This seems to dispose of the question in so far as other counties are concerned.

July 25, 1950—050-363.

TAMPA GARDEN APARTMENTS, McDILL AIR FORCE BASE—
LEASEHOLD INTERESTS—SUBJECT TO TAXATION—
SECTION 200.01, FLORIDA STATUTES—
HILLSBOROUGH COUNTY

QUESTION: Where the United States, through one of its military agencies, pursuant to Act of August 5, 1947 (10 U.S.C. 1270) and the Act of August 8, 1949 (12 U.S.C. 1748d) leases a part of one of its military bases in this State for purposes of military housing as in said statutes contemplated, may the rights and interests of the lessee in

such property be subjected to ad valorem taxes under the statutes of this State?

To: Board of County Commissioners, Hillsborough County, Tampa, Fla.:

.....

Under the above observations and authorities we feel that leasehold interests, when the dominant fee is vested in the United States, under the above and foregoing circumstances, may be subjected to taxation. If the lease is for a term of years it should be assessed as tangible personal property, but if for life it should be taxed as an interest in real property. These observations conditionally answer the above question in the affirmative.

EXCISE TAXES ON DOCUMENTS

January 18, 1949—049-14.

PROMISSORY NOTES—MORTGAGES—ETC.—DOCUMENTARY STAMPS TAX—PRODUCTION CREDIT ASSOCIATION, FARMERS' HOME CORPORATION OR FEDERAL LAND BANK

QUESTIONS: 1. Are promissory notes, secured by mortgages encumbering real property in this State, held by Production Credit Associations, the Farmers' Home Corporation, or a Federal Land Bank, subject to our intangible personal property taxes?

2. Are such promissory notes liable to state documentary stamp taxes, when made, executed or delivered in this State?

To: Honorable Dale M. Leslie, Clerk Circuit Court, Madison, Madison County, Florida:

..... It, therefore, appears that the first question should be answered in the negative.

If the said promissory notes were made, executed or delivered in the State of Florida it would seem that under Chapter 201, Florida Statutes, 1941, as amended, such notes were subject to documentary stamp taxes. The primary obligation to pay such taxes would be upon the makers thereof and not on the holders thereof, although delivered to an agency of the United States (See U.S. v. Lee, 153 Fla. 94, 13 So. 2nd. 919). After delivery to the federal government the said government was under no obligation to pay such stamp taxes. Whenever it appears that documentary stamp taxes have not been paid upon instruments recorded in the Office of the Clerk of the Circuit Court the Clerk should make a report thereof to the State Comptroller for his action. This seems to answer the second question.

November 19, 1949—049-549.

CORPORATIONS—TITLE—TRANSFER BY MERGER—NOT SUB- JECT TO DOCUMENTARY STAMP TAXES—CHAPTER 201, FLORIDA STATUTES

QUESTION: Where a Florida corporation owning real estate in this state is merged with another corporation, pursuant to Sections 612.38 and 612.39, Florida Statutes, and a deed of conveyance is sub-

sequently made, executed and recorded evidencing the transfer of the title pursuant to such merger, is such deed subject to documentary stamp taxes under Chapter 201, Florida Statutes?

To: Honorable C. M. Gay, State Comptroller:

.....
..... we think that the above question should be answered in the negative.

December 7, 1949—049-583.

**BONDS—CONDITIONAL OR DOUBLE—SECURED BY MORTGAGE
—DOCUMENTARY STAMP TAXES REQUIRED**

QUESTIONS: 1. Where subdividers of real property, as a condition precedent, in connection with the approval of said subdivision by the board of county commissioners, gives a double or conditional bond to the county, to insure the construction of the streets, alleys and thoroughfares indicated upon the plat of such subdivision, conditioned that should the makers of such bond construct such streets, alleys and thoroughfares as promised the said bond to become null and void, otherwise to remain in full force and effect, and secures the same by a mortgage upon real property, is such instrument subject to documentary stamp taxes and if so in what sum?

2. Is such an instrument subject to class "C" intangible personal property taxes?

To: Honorable C. M. Gay, State Comptroller:

..... The first question is therefore answered in the affirmative.

The bond or instrument in question is probably intangible personal property; however, "intangible personal property belonging to the State of Florida, or any political subdivision thereof . . . shall be exempt from taxation." The bond or instrument in question appears to be owned by Dade County, Florida. This would seem to answer the second question in the negative, without any determination as to the classification of double or conditional bonds under the intangible personal property taxing laws.

.....
March 22, 1950—050-140.

OIL AND GAS LEASES—ASSIGNMENTS, ETC.—SUBJECT TO DOCUMENTARY STAMP TAXES—§201.02, FLORIDA STATUTES

QUESTION: Are oil and gas leases, and assignments or conveyances of oil, gas and mineral rights, or royalty interests, affecting lands in this state, subject to our documentary stamp taxing statutes?

To: Honorable C. M. Gay, State Comptroller:

.....
The above question is, therefore, answered in the affirmative; subject, however, to the above observations as to the consideration for purposes of taxation.

May 11, 1950—050-238.

NONPROFIT COOPERATIVE ASSOCIATION—CERTIFICATE OF
EQUITY SUBJECT TO DOCUMENTARY STAMP TAXES—
§201.05, FLORIDA STATUTES

QUESTION: Is a "certificate of equity in Growers' Surplus," issued by an association incorporated under Chapter 619, Florida Statutes, subject to documentary stamp taxes under Section 201.05, Florida Statutes?

To: Honorable C. M. Gay, State Comptroller:

.....

We are, therefore, of the opinion that the above question should be answered in the affirmative if the certificate of equity in question is subject of valuation for taxation purposes.

May 18, 1950—050-246.

DOCUMENTARY STAMP TAXES—PROMISSORY NOTES—CON-
TRACTS—PROMISED PAYMENT CONTAINED IN—
CHAPTER 201, FLORIDA STATUTES

QUESTION: Where, in connection with an agreement entered into in this State for the purchase of real property, there is executed and delivered, as a part of the transaction, a promissory note for the payment of a sum certain and a covenant, contained in the written agreement to purchase, for the payment of the same amount, is either or both of said promises to pay subject to documentary stamp taxes?

To: Honorable C. M. Gay, State Comptroller:

.....

Although we are of the opinion that, when the indebtedness is evidenced by both a promissory note and a written obligation contained in a contract to purchase real property, each of such promises is not subject to taxation, in such cases the promissory note should be taxed, we are of the further opinion that when the contract to purchase is such as to convey or vest in the purchaser any interest in the lands sold that the said agreement is taxable to that extent under Section 201.02, Florida Statutes (1931-2 Biennial Report 840 and 1939-40 Biennial Report 435). Where a part of the purchase price of lands has been paid under a purchase contract the purchaser becomes the equitable owner to the extent of his payments (55 Am. Jur. 783, Section 356), this is especially true when the vendee is put into possession of the purchased premises. A vendee in possession under an executory contract for the purchase of real property is sometimes considered in equity as the owner of the real property in his possession (66 C. J. 1028, Section 773; 55 Am. Jur. 783, Section 356, at note 12). Whether or not an agreement to sell and convey real property should be considered as a conveyance of an interest in real property may, in many instances depend upon the facts and circumstances surrounding the contract itself.

The instrument exhibited with the request for opinion appears to merely be an agreement to make a deed upon the completion of the payment of the purchase price; we find nothing in it expressly giving the vendee right of possession. Each agreement to convey should be

examined, together with the facts and circumstances surrounding it, for the purpose of determining whether or not it conveys a present interest in the lands. Where stamp taxes are due upon an instrument conveying an interest in lands they are payable by the vendor (under Section 201.02, Florida Statutes); stamp taxes due, if any, upon the promissory note or other written obligation to pay money (under Section 201.08, Florida Statutes) are payable by the purchaser.

The above observations seem to furnish the formula for answering the above question, the answer to which may, under some circumstances, depend upon the facts and circumstances surrounding the agreement.

Note: This opinion amended by #050-261.

May 30, 1950—050-261.

DOCUMENTARY STAMP TAXES—AMENDING OPINION NO. 050-246
—CHAPTER 201, FLORIDA STATUTES

To: *Honorable C. M. Gay, State Comptroller:*

AMENDMENT: "The instrument exhibited with the request for opinion appears to merely be an agreement to make a deed upon the completion of the payment of the purchase price; we find nothing in it expressly giving the vendee right of possession. Each agreement to convey should be examined, together with the facts and circumstances surrounding it, for the purpose of determining whether or not it conveys a present interest in the lands. Where stamp taxes are due upon an instrument conveying an interest in lands they are payable by the vendor (under Section 201.02, Florida Statutes); stamp taxes due, if any, upon the promissory note or other written obligation to pay money (under Section 201.08, Florida Statutes) are payable by the purchaser."

will read as follows:

"The instrument exhibited with the request for opinion appears to merely be an agreement to make a deed upon the completion of the payment of the purchase price; we find nothing in it expressly giving the vendee right of possession. Each agreement to convey should be examined, together with the facts and circumstances surrounding it, for the purpose of determining whether or not it conveys a present interest in the lands. Where stamp taxes are due an instrument conveying an interest in lands they are payable under Section 201.02, Florida Statutes; stamp taxes due, if any, upon the promissory note or other written obligation to pay money are payable under Section 201.08, Florida Statutes."

September 27, 1950—050-454.

DOCUMENTARY STAMP TAXES—POLICY LOANS BY INSURERS—
PROMISSORY NOTES—CHAPTER 201, FLORIDA
STATUTES APPLICABLE

QUESTION: Where an insured in this State procures a loan from his insurer, and delivers his policy to the insurer and stipulates that the insurer shall have a lien upon the loan value of such policy and executes a promissory note to the insurer to evidence the said loan

and obligation, are such promissory note and lien subject to documentary stamp taxes under and by virtue of Chapter 201, Florida Statutes?

To: Honorable C. M. Gay, State Comptroller:

..... It, therefore, appears that the above question should be answered in the affirmative.

September 28, 1950—050-459.

DOCUMENTARY STAMP TAXES—RIVIERA COUNTRY CLUB—
CERTIFICATE OF MEMBERSHIP—CHAPTER 201,
FLORIDA STATUTES NOT APPLICABLE

QUESTION: Where the Riviera Country Club of Coral Gables, Florida, a corporation existing under the statutes of this state providing for the incorporation of non-profit corporations, issues certificates of membership to its members, evidencing such members rights in the property of the said corporation, without fixing any value of the same, are such certificates of membership subject to stamp taxes under Chapter 201, Florida Statutes?

To: Honorable C. M. Gay, State Comptroller:

..... In *Kansas Wheat Growers' Association v. Metter*, Collector, DC Kan., 14 Fed. 2d. 242, the court had under consideration a certificate of membership in an association existing under a similar statute.

The facts presented by the above federal case appear to be very similar to those here presented and are applicable to the instant case. We are inclined to agree with the law and its application as stated in the said federal case. We, therefore, do not think that the above mentioned certificates are within the purview of our documentary stamp taxing statutes and that the above question should be answered in the negative.

October 30, 1950—050-504—049-14.

Opinion No. 049-14 Withdrawn—050-504 *Written in Lieu of*
INTANGIBLE PERSONAL PROPERTY TAXES—DOCUMENTARY
STAMPS—NOTES—OBLIGATIONS HELD BY FEDERAL
AGENCIES CHAPTER 201, FLORIDA STATUTES

QUESTIONS: 1. Are promissory notes and other obligations secured by mortgage encumbering real property in this State, held by a Federal Land Bank, the Farmers' Home Corporation, or a Federal Production Credit Association, subject to our intangible personal property taxing statutes?

2. Are such promissory notes and other obligations held by such Federal agencies subject to our documentary stamp taxing statutes, when made, executed or delivered in this State?

To: Honorable Dale H. Leslie, Clerk Circuit Court, Madison, Florida:

..... It, therefore, appears that the first question should be

answered in the negative; except as to Production Credit Associations in which the United States owns no stock.

Documentary stamp taxes.—Chapter 201, Florida Statutes, appears to levy an excise tax upon promissory notes and other written obligations to pay money (Section 201.08, Florida Statutes) made, signed, executed, or issued in this State (Section 201.01, Florida Statutes). We find no state statute expressly exempting notes and other written obligations to pay money to the United States and its agencies and instrumentalities from the operation of the statute when made, executed, signed or issued in this State. Therefore, if such instruments are exempt from the operation of the Florida Statutes such exemption must arise from some superior Federal statute or law

. In the light of these observations it appears that the second question should be answered in the negative, in so far as it relates to promissory notes and obligations to pay money executed to the Federal Land Banks and its agencies above mentioned.

. This answers the first question, in so far as it applies to notes and other evidences of indebtedness payable to the Farmers' Home Corporation, in the affirmative.

. This answers the second question, in so far as it applies to notes and other evidences of indebtedness payable to Federal Production Associations, in the affirmative.

Although we hold in this opinion that promissory notes and other obligations to pay money executed to the Farmers' Home Corporation and Federal Production Credit Associations are subject to the State Documentary Stamp Taxes, in so far as the maker is concerned, there is no obligation on the part of the said agencies of the Federal government to make payment in case the maker does not. Collection may be made from the maker only. The Federal agencies are entitled to have the instruments recorded upon application although the taxes may not have been paid by the maker. The State's remedy is against the maker and not the Federal agency.

In the light of these observations the opinion of January 18, 1949 (049-14) is hereby withdrawn and this opinion substituted in lieu thereof.

December 29, 1950—050-581.

**DOCUMENTARY STAMP TAXES—WAGES—ASSIGNMENTS—
AGREEMENTS CONCERNING—C. 201,
FLORIDA STATUTES**

QUESTION: Where an employee of an industry in this State procures a loan from a banking institution in this State, payable in one or more installments, such employee at the same time requesting his employer to deliver his pay checks to the bank, which the employer agrees to do, and authorizing the bank to receive, endorse and place the proceeds of the said check to his account and charge the said installments to the said account, does the said instrument or instruments constitute an assignment of wages so as to be subject to documentary stamp taxes under Chapter 201, Florida Statutes?

To: Honorable C. M. Gay, State Comptroller, Tallahassee, Florida:

..... We feel that the instruments in question are more in the nature of powers of attorney and bailments than assignments of wages.

As taxing statutes are to be construed in taxpayer's favor (*State v. Cook*, 108 Fla. 157, 146 So. 223; *Lee v. Quincy State Bank*, 127 Fla. 765, 173 So. 909; *Metropolis Publishing Company v. Lee*, 126 Fla. 107, 170 So. 442) we doubt that the instruments in question are subject to taxation as an assignment of wages under Section 201.08, Florida Statutes.

The instrument authorizing the bank to endorse the checks to the employee and deposit them to his account is clearly a power of attorney; as is also the request and direction to the employer to deliver the said check to the bank. This latter request is in the nature of a power of attorney to deliver the check to the bank instead of the payee. The check is to be delivered to the bank for the payee. Each of these instruments appears to be subject to taxation under Section 201.03, Florida Statutes.

GROSS RECEIPTS TAXES, GENERALLY

April 1, 1950—050-168.

LIQUEFIED PETROLEUM CASES—TAXATION UNDER CHAPTER 203, FLORIDA STATUTES

QUESTIONS: 1. Is liquefied petroleum gas, which is used for cooking and heating and supplied from outside the building of the user, subject to taxation under Chapter 203, Florida Statutes, when sold in liquid form to the consumer?

2. When the same form of gas is supplied to users, in gas form, through gas mains or pipes, is it subject to the said tax?

To: Honorable C. M. Gay, State Comptroller:

..... These observations seem to answer the first question in the negative.

..... The second question is, therefore, answered in the affirmative.

CHAIN STORE TAXES

January 31, 1950—050-46.

CHAIN STORES—NUMBER—RETAILER REPORT TO COMPTROLLER—TAX LIABILITY—REPEAL OF SECTIONS 204.03-04—NO EFFECT ON REQUIREMENT

QUESTION: What effect has the repeal of Sections 204.03 and 204.04, Florida Statutes, by Section 22, Chapter 26319, Laws of Florida, Acts of 1949, upon the requirement that persons engaged in the business of a retailer report to the state comptroller and the number of stores operated by them in the United States and elsewhere as well as in this state?

To: *Hon. C. M. Gay, State Comptroller:*

..... we feel that Section 204.04, Florida Statutes, was merely declaratory of the general requirements under other sections of the statutes. Its repeal had no effect upon the requirement that persons engaged in the business of a retailer report to the state comptroller the number of stores operated by them and such other information as may be necessary to fix their tax liability.

LICENSE TAXES

March 23, 1949—049-120.

COIN OPERATED MACHINES—LICENSE TAX VIOLATION—LIABLE TO PROSECUTION—AUTHORITY NOT VESTED IN COUNTY OFFICIALS TO SEAL

QUESTIONS: 1. What enforcement provisions of law are available to county authorities as against operators of coin-operated machines with respect to which no license taxes have been paid?

2. May the tax collector or other county official seal such machines against use until such tax is paid, with notice of penalty for breaking such seal?

To: *Honorable Walter Lanier, Tax Collector, Pinellas County, Clearwater, Florida:*

There appears to be no law authorizing the tax collector or other county official to seal such a machine with respect to which required license tax has not been paid. The operator of any such machine is liable to prosecution under Section 205.65, Florida Statutes, 1941. Such license tax may be collected by warrant issued under the circumstances and conditions set forth in Section 205.10, Florida Statutes, 1941.

March 29, 1949—049-134.

STATE HOTEL COMMISSION—OCCUPATIONAL LICENSES—DISABLED VETERAN—EXEMPTION \$50.00

QUESTION: Is a disabled war veteran liable for a State Hotel Commission inspection fee on a restaurant owned and operated by him?

To: *Honorable James T. Landon, State Hotel Commissioner, Tallahassee:*

Section 205.16 as amended gives to war veterans exemption from occupational license tax up to the sum of \$50. The exemption does not extend to other fees authorized by law.

August 4, 1949—049-385.

JENNINGS, TOWN OF—OCCUPATIONAL LICENSE TAX—TRUCKS—SELLING—DELIVERING—GOODS TO RETAIL MERCHANTS

QUESTION: Does the town of Jennings have a legal authority to assess occupational license tax against trucks engaged in selling and delivering goods to retail merchants within the town limits?

To: Honorable Wilbur J. Toole, Mayor, Jennings, Florida:

.....

We assume that the trucks in question operate from an established place of business for which a Florida license tax is paid, and that there is no contrary charter provision of the Town of Jennings subsequent to said Section 205.59, Florida Statutes. Based on these assumptions, it is my opinion that your question should be answered in the negative.

August 22, 1949—049-401.

**DISABLED VETERANS—OUTDOOR ADVERTISING—EXEMPTIONS
—OCCUPATIONAL LICENSE TAX \$50.00—DEVICE PERMIT
FEES—SECTION 479.07, F. S. '49**

QUESTIONS: 1. Are disabled veterans exempt, under the provisions of Section 205.16, Florida Statutes 1941, as amended, from the payment of license to engage in the business of outdoor advertising, imposed by Chapter 20446, Laws of 1941 (Chapter 479, Florida Statutes 1941)?

2. Are disabled veterans exempt from the payment of individual device permit fees provided for by Section 479.07, Florida Statutes 1941?

To: Honorable Max Denton, Director, Division Outdoor Advertising, State Road Department:

.....

Since the license fee imposed for the use of the several counties is less than the sum of fifty dollars, the disabled veteran would be further exempt from the payment of the county license fee, regardless of the number of counties in which he operates.

2. The individual device permit fees imposed by the provisions of Section 479.04 are not occupational license taxes, but merely fees charged for the privilege of erecting and maintaining advertising signs in connection with the operation of a business or the pursuing of an occupation unrelated to the business of outdoor advertising. No exemption is granted to a veteran from the payment of permit fees imposed by this section.

Question numbered 1, subject to the foregoing limitation is answered in the affirmative.

Question numbered 2 is answered in the negative.

September 20, 1949—049-444.

**INSURANCE—REINSURANCE—GROSS PREMIUM RECEIPTS TAX
—SPECIFIC SITUATION—SECTION 205.43, F. S. '41**

QUESTION: Is an insurance company, organized and doing business under the laws of the State of Florida, liable for the payment of the gross premium receipts tax imposed by Section 205.43 (2), Florida Statutes, under the two factual situations set forth: (1) When the Florida company assumes reinsurance from an alien company (a company outside the United States) and reinsures 100% with underwriters at Lloyd's of London? (2) When the Florida company writes business on a direct basis with a company within the State of Florida

covering risks located in states other than Florida in which the Florida company is not authorized to do business, an example of this type of business being a multiple location risk?

To: *Honorable J. Edwin Larson, Insurance Commissioner:*

It is apparent that the questions do not involve in anyway premium receipt taxes payable by a licensed supervisory general agent or a licensed agent under Chapter 25414, Laws of Florida, Acts of 1949. The questions indicate that they involve a fire or casualty company and the risks ordinarily insured by such a company; and this is assumed to be true. As far as this office has been able to ascertain, all fire or casualty companies organized and existing under the laws of the State of Florida maintain their home offices in this state. Such domestic insurance companies are exempt from the payment of the premium receipts taxes imposed by Section 205.43 (2) by virtue of the provisions of Chapter 25344, Laws of Florida, Acts of 1949. Hence, there would seem to be no reason to discuss the question further.

If it should develop that there is a fire or casualty company organized under the laws of this state which maintains its home office in a state other than Florida, the above questions may be resubmitted for an opinion.

It is remarked that the factual situation set forth in the first question might collide with the prohibition concerning reinsurance found in Section 631.11, Florida Statutes.

September 28, 1949—049-457.

CITRUS JUICE VENDING MACHINES—"SNIVELY'S 100% FLORIDA ORANGE AND GRAPEFRUIT BLENDED JUICE SUGAR ADDED"—CHAPTER 25124, ACTS 1949

QUESTION: Are coin operated vending machines vending "Snively's 100% Florida orange and grapefruit blended juice sugar added" in this state exempted from excise or license taxes by Chapter 25124, Laws of Florida, Acts of 1949?

To: *Honorable C. M. Gay, State Comptroller:*

.....
..... we think that the above question should be answered in the affirmative.

October 3, 1949—049-471.

DISABLED VETERANS—WORLD WAR I AND II—MANUAL LABOR—ENTITLED EXEMPTION—SECTION 205.16(6), FLORIDA STATUTES, 1941

QUESTION: Is a World War II Veteran exempt as provided for World War I Veterans and others under Section 205.16, regardless of whether he is disabled "from performing manual labor," and regardless of whether or not he meets the other conditions of the exemptions provided by Section 205.16?

To: *Honorable Francis R. Pettaway, Tax Collector, City of Lakeland, Florida:*

.....
Section 205.16-1 must also be construed in the same manner.

Therefore, it is my opinion that the word "disabled" as applied to World War II Veterans means disabled from performing manual labor and further that he must meet all of the other qualifications for exemption that apply to World War I Veterans. I cannot by any stretch of the imagination believe that it was the intent of the Legislature to give one class of veterans any kind of an advantage over the other.

October 28, 1949—049-517.

**CIGARETTE VENDING MACHINES—COIN OPERATED—LICENSES
—REQUIRED UNDER BOTH—§210.17, CH. 26320, ACTS
1949—AND §205.63, F. S. '41**

QUESTION: Did the amendment of Section 210.17, Florida Statutes, by Chapter 26320, Laws of Florida, Acts of 1949, repeal or otherwise affect the provisions of Section 205.63, Florida Statutes, so that no occupational license under said Section 205.63 will be required for the operation in this state of coin operated cigarette vending machines?

To: Honorable C. M. Gay, State Comptroller:

.....
In the light of these authorities we are unable to say that Section 210.17, Florida Statutes, as amended, is in conflict with Section 205.63, Florida Statutes, so as to repeal it by implication as to coin operated cigarette vending machines. The two occupational licenses appear to relate to separate classifications for the purposes of taxation and may stand together. The above question should, therefore, be answered in the negative and licenses may be required under both sections of the statutes.

October 21, 1949—049-532.

**DISABLED VETERANS—MANUAL LABOR—ENTITLED
EXEMPTION—ALLOWED HELPER**

QUESTION: Is that portion of Section 205.16(1), Florida Statutes, which provides "... which may be carried on mainly through the personal efforts of the licensee as a means of livelihood. . ." to be construed to mean that the licensee cannot employ people in his business unless his disability is such that he could not possibly perform manual labor without the assistance of one helper?

To: Mr. Melvin T. Dixon, State Service Officer, Department of Veterans' Affairs, Pass-A-Grille, Florida:

Section 205.16(1) also contains the following provision "... and who at the time of his application for licenses as hereinafter mentioned shall be disabled from performing manual labor. . ."

These two provisions must be considered together in order to answer your question.

.....
Your question is therefore answered in the negative.

November 17, 1949—049-544.

DISABLED VETERANS—EXEMPTIONS—AMOUNT ALLOWED

QUESTIONS: 1. Under the provisions of Section 205.16, Florida Statutes Annotated, is a disabled veteran entitled to a \$50 exemption from each, state, county and municipal occupational license tax?

2. Under the provisions of Section 205.16, Florida Statutes Annotated, is a disabled veteran entitled to exemption from the payment of occupational license tax to the extent of \$50 where the veteran employs help to conduct his business?

To: Mr. Melvin T. Dixon, State Service Officer, Department of Veterans Affairs, Pass-A-Grille, Florida:

On October 17, 1946, my predecessor in office rendered an opinion, No. 046-448, in which I concur. I enclose copy of this opinion, which will answer your question No. 1.

On October 17, 1949, you requested an opinion from this office relating to your question No. 2. It appears from your letter that you had not received this opinion on November 7, even though this opinion was dated October 21. I enclose copy of this opinion, our No. 049-532, which I believe will answer your question No. 2.

December 23, 1949—049-606.

SEE: OPINIONS NO. 049-401—046-448—047-436

DISABLED VETERANS' OUTDOOR ADVERTISING—EXEMPTION—
COUNTY APPLICABLE—BILLBOARD PERMIT

QUESTION: Are disabled veterans exempt, under provision of Section 205.16, Florida Statutes, as amended, from payment of license to engage in the business of outdoor advertising, imposed by Chapter 20446, Laws of 1941 (Chapter 479, Florida Statutes, 1941)?

To: Honorable Max Denton, Director, Division Outdoor Advertising, State Road Department:

Upon a reconsideration of the above question set forth in opinion No. 049-401, dated August 22, 1949, it is determined that the answer to the question in such opinion is subject to correction.

.....
..... (1) a veteran is entitled to an exemption to the extent of \$50 on each license required (State, County or municipal) and in the event either of such licenses exceeds \$50, the remainder in excess of \$50 shall be paid by the veteran; (2) the exemption applies to only one place of business or profession, hence, to the licenses for such a business or profession in one county.

The foregoing conclusions are in accord with opinions of my predecessor in office, numbers 046-448 and 047-436, with which I agree.....

January 3, 1950—050-1.

SLOT MACHINES, DISPENSING REWARD—POSSESSION OF SLOT
MACHINES—CONFISCATION—\$205.63, \$849.15-23, F. S.

QUESTIONS: 1. Where slot machines were seized and upon trial of the cause a mistrial resulted and thereupon the case was nolle prosequied, is the former owner entitled to have said machines returned to him?

2. If the first question is answered in the affirmative, is the former owner subject to immediate arrest upon taking them into his possession?

To: *Honorable John D. Justice, Sarasota County Judge:*

.....

However, even if the Anti-Slot Machine Act be applicable I believe that on the facts that you present the machines should be returned to the former owner if he desires them because the provisions of that Act (section 849.18, Florida Statutes) contemplate that, as a prerequisite to forfeiting and destroying such machines, there must be a conviction of the person prosecuted under the Act. In your case, there has been no conviction and the prosecution has been abandoned.

But, if these "slot machines" do in fact dispense rewards or prizes in one form or another I am of the opinion that the former owner would be subject to immediate arrest upon taking said machines into his possession, because, as stated above mere possession of such machines is unlawful.

February 20, 1950—050-76.

PETROLEUM DEALER—LICENSE BY CITIES—§205.59, F.S. '41

QUESTION: Where a wholesale dealer in petroleum products is duly licensed to do business in one city but in connection with said business delivers gasoline at wholesale within the corporate limits of another city, may the latter municipality place an additional license tax upon the dealer for the privilege of doing business therein?

To: *Hon. C. C. Caulk, Clerk, City of Madison:*

.....

It is therefore my opinion, subject to the assumption that no special act has been passed which would supersede the provisions of Section 205.59, Florida Statutes 1941, in so far as they relate to the City of Madison, that the question must be answered in the negative.

April 1, 1950—050-169.

TAX EXEMPTIONS—VETERANS OF ALLIED ARMIES—WAR VETERANS—§205.15, §205.16, §205.161, FLORIDA STATUTES APPLICABLE

QUESTION: Are disabled veterans of the armed forces of Canada and other allies of the United States in World Wars I and II entitled to any exemptions from the payment of occupational license taxes under the statutes of this state?

To: *Honorable C. M. Gay, State Comptroller:*

.....

The above question might be answered by stating that Canadian war veterans, as well as war veterans of other of the allies of the United States, are not within the purview of Sections 205.16 and 205.161, Florida Statutes, and are therefore not entitled to exemptions as such veterans; however, if such veterans have suffered any of the disabilities mentioned in Section 205.15, Florida Statutes, they would be entitled to the exemptions therein mentioned although their disability may be war connected.

April 25, 1950—050-213.

**MOTION PICTURE EXHIBITIONS—§205.31, §205.49, §205.61,
FLORIDA STATUTES**

QUESTIONS: 1. Are the following exhibitions of motion pictures within the purview of Section 205.61, Florida Statutes:

(a) Exhibition of motion pictures in bars, hotels and other public places, by persons other than the proprietor of such places, for which no admission is charged but for which services the person making the exhibition is paid a salary or other compensation?

(b) Exhibition of motion pictures in bars, hotels and other public places, by the proprietors of such places, when no admission is charged?

(c) Exhibitions of motion pictures in any place, other than perhaps in private homes, schools, churches, and halls of charitable and fraternal organizations, when no admission is charged?

2. Is the showing of commercial films by an amateur operator of the projection equipment itself, to be classified as a "local amateur performance" within the meaning of Section 205.61, Florida Statutes?

To: Honorable Earnest Overstreet, County Tax Collector, Miami, Dade County, Florida:

.....

A moving picture show has been defined as a place where motion pictures are exhibited for the purpose of public amusement and entertainment (State v. Morris, 28 Idaho 599, 155 P. 296, text 297, L. R. A. 1916 D 573). It has been said that the term "show" has a variety of meanings, largely depending upon the context and manner in which used (Kenyon v. Crane, 120 Fed. 380, text 384). Section 205.32, Florida Statutes, which was derived from Section 47 of the 1913 act, has been construed as relating to "shows of a commercial character" (1927-8 Biennial Report 350). Section 205.61 was Section 48 of the said 1913 act. These statutes seem to contemplate public exhibitions or shows for commercial purposes (see 62 C. J. 853, et seq., Sections 23 et seq.). The statute seems to contemplate the exhibition of the motion picture be the main, or one of the main, attraction and not some immaterial incident to the business. If the exhibition of the motion picture in a restaurant, bar, hotel, or other place is used as a main and regular attraction for the purpose of obtaining patronage for the business, and not merely as gratuitous entertainment furnished as a mere incident of the business, it is within the statute (see 62 C.J. 854, note 20 et seq.). The proprietor of such places of business may furnish moving pictures or other type of legal entertainment to their customers as a mere incident to the operation of that business, but not as one of the main features of the business, without being required to obtain a license. Any charge for admission, cover charge, or other charge, other than for purchases or services rendered, would strongly indicate that the exhibition of a motion picture in a place of business was for commercial purposes and not as a mere incident thereto.

The above observations seem to supply the rule by which the first question (divided into three parts) may be answered. The answers must depend upon the facts and circumstances in each individual case,

which should be ascertained and applied to the above rules by the tax collector or other person charged with the collection of the tax.

In reply to the second question, the fact that a show is put on by an amateur operator of a motion picture projection machine will not constitute it a local amateur performance, if the exhibition is given for commercial purposes.

Although a motion picture exhibition might be put on by the owner of motion picture equipment and material so as not to amount to a commercial exhibition, however, if such person makes the furnishing of such exhibitions his business, profession or occupation he would be required to obtain a proper occupational license. If not subject to any other classification he would be subject to classification under Section 205.49, Florida Statutes.

The above observations seem to answer the above stated questions as definitely as they may be here answered.

May 6, 1950—050-230.

INSURANCE—DOMESTIC AND FOREIGN INSURERS—PREMIUM
RECEIPTS CREDIT—CHAPTER 25344, ACTS 1949—EF-
FECTIVE DATE JUNE 13, 1949—\$205.44-1—
REPEALED SAME DATE

QUESTION: What was the effective date of the repeal of Section 205.44-1, Florida Statutes, 1941, under Sections 2 and 4 of Chapter 25344, Laws of 1949?

To: Honorable J. Edwin Larson, Insurance Commissioner, Tallahassee, Florida:

.....

Hence, it seems reasonable and in accord with the above pronouncement of our Supreme Court that the effective date of the repeal of Section 205.44-1 in so far as possible domestic insurers not maintaining a home office in this state and foreign insurers are concerned, is here determined to be the effective date of Chapter 25344, namely June 13, 1949. Thus, such named insurers are entitled to the credit on premium receipts taxes formerly granted by Section 205.44-1, with respect to premiums collected during the period from January 1 to and including June 12, 1949.

August 7, 1950—050-383.

EXEMPTIONS—OPTICIANS FEES—DISABLED VETERANS—\$205.16
AND \$484.08, FLORIDA STATUTES

QUESTION: Is the exemption to war veterans provided by Section 205.16, Florida Statutes, applicable to the fees paid to the Florida State Board of Dispensing Opticians under Section 484.08, Florida Statutes, so as to exempt war veterans within the purview of said Section 205.16 from the payment of the fees mentioned in said Section 484.08, Florida Statutes?

To: Dr. Leon St. John, Chairman, State Board of Dispensing Opticians, Tampa, Florida:

.....

The question is accordingly answered in the negative.

August 18, 1950—050-407.

FLORIDA GROWER AND SELLER—OCCUPATIONAL LICENSES—
EXEMPT UNDER §205.17, FLORIDA STATUTES—ZONING
—HIGHWAY REGULATIONS—REQUIREMENTS

QUESTIONS: 1. Is a Florida grower of agricultural produce who offers his own produce for sale exempt from the requirement of obtaining occupational licenses?

2. Is such grower-seller permitted to offer his produce for sale in a community without complying with local zoning regulations, highway regulations or occupational license requirements?

To: Honorable Herbert S. Shapiro, Assistant County Solicitor, Dade County, Miami, Florida:

.....

..... Your first question is answered in the affirmative.

Although the above statute, §205.17 F.S. '49, exempts a grower-seller from all forms of license tax, there is nothing in the statute which may be construed as exempting such grower-seller from complying with zoning regulations, highway regulations or occupational license requirements other than such grower-seller is exempted from paying an occupational license fee.

The City of Miami has statutory power by charter to make regulations governing the conduct of business within its own limits and impose an occupational license tax for the privilege of conducting said business. The statute referred to exempts growers-sellers from payment of a license tax fee but does not in any way exempt said growers-sellers from complying with said regulations.

In view of the foregoing, the answer to your second question is in the negative.

September 14, 1950—050-443.

DISABLED VETERANS—DECEASED—UNMARRIED WIDOWS ENTITLED TO OCCUPATIONAL LICENSES EXEMPTIONS—
§205.16(1), FLORIDA STATUTES

QUESTION: Is the unmarried widow of a deceased disabled veteran entitled to the \$50.00 exemption provided for in Sections 205.16 and 205.161, Florida Statutes 1949, where the disability of the deceased veteran was not incurred while a member of the armed forces of the United States and in line of duty?

To: Honorable Ralph O. Johnson, City Attorney, Pahokee, Florida:

Your question is, therefore, answered in the affirmative.

September 28, 1950—050-460.

OCCUPATIONAL LICENSE TAXES—BUSINESSES—COURT APPOINTED RECEIVERS—REQUIREMENT UNDER OPERATION OF RECEIVERSHIP ONLY

QUESTION: Is a receiver appointed by a Circuit Court liable for the occupational license tax levied under Chapter 205, Florida Stat-

utes, against the owner of the business in receivership, and may the tax collector enjoin the operation of the business by the receiver, under Section 205.10, Florida Statutes, until payment of this occupational license tax, or may the receiver merely pay whatever license tax that may be applicable by virtue of the receivership operation?

To: Honorable James S. Moody, Assistant County Attorney, Hillsborough County, Plant City, Florida:

.....

In the instant case the State's claim for a license tax as against the owner of the business before receivership is a claim against the property of the business in the hands of the receiver; however, the said claim must take its usual course in the receivership and may not be enforced by warrant or injunction, at least in the absence of court consent. The receiver at most is only liable for the current license applicable since he took possession of the assets of the business under court order. He would seem to be required to obtain a license for the operation of the business under the receivership only; any prior and unpaid license fees would be charged against the receivership estate. This seems to answer the above question.

September 29, 1950—050-471.

FERNANDINA PORT AUTHORITY—LICENSE TAX—NOT SUBJECT TO—SECTION 205.62, FLORIDA STATUTES

QUESTION: Is the Fernandina Port Authority subject to the license tax provided for in Section 205.62, Florida Statutes?

To: Honorable C. M. Gay, State Comptroller:

.....

In view of the foregoing provisions of Chapter 26048, it is my opinion that your question should be answered in the negative, that is to say, the Fernandina Port Authority is not subject to the license tax provided for in Section 205.62, Florida Statutes.

As it is not the province of this office to pass upon the constitutionality of Acts of the Legislature no attempt has been made to do so here.

October 11, 1950—050-484.

PIN BALL MACHINES—"FREE PLAY" MECHANISM REMOVED—NO PRIZES OR REWARDS DISPENSED—NOT UNLAWFUL

QUESTION: Where the "free play" mechanism of a pin ball machine is removed, plugged, or otherwise rendered inoperative, so that the machine will no longer dispense free plays, is it unlawful to possess or permit the operation of such machine?

To: Honorable Fuller Warren, Governor of Florida, Capitol:

.....

Therefore, it is my opinion that if the free play mechanism of a pin ball machine is rendered inoperative so that the machine does not dispense free plays, and if it does not dispense any other form of prize or reward, it may lawfully be possessed and, that if properly licensed, the licensee may lawfully permit it to be operated for amusement.

If the machine should be reconverted into a machine that dispenses free plays, or if it should be converted into a machine that dispenses any other form of prize or reward, it would then be unlawful to possess the machine or permit it to be operated.

October 20, 1950—050-499.

**WORLD WAR II—MAN LOST IN SERVICE—UNREMARIED
WIDOW NOT ENTITLED EXEMPTION SECTION
205.161, FLORIDA STATUTES**

QUESTION: Is the unremarried widow of a man lost in service in World War II entitled to exemption under the provisions of §205.161?

To: Honorable C. M. Gay, State Comptroller:

.....

..... your question should be answered in the negative.

December 19, 1950—050-570.

**AUTOMOBILE STOCK CAR RACING—OCCUPATIONAL
LICENSE TAX—§205.49, FLORIDA
STATUTES APPLICABLE**

QUESTION: Under the provisions of Chapters 549 and 205, Florida Statutes, what occupational license tax is imposed upon the business of operating automobile stock car racing?

To: Honorable C. M. Gay, State Comptroller:

.....

The lawful license tax imposed upon persons conducting automobile stock car racing as a business or occupation is \$100 annually, which is payable on or before the first day of October of each year.

TAXES ON GASOLINE AND LIKE PRODUCTS

January 29, 1949—049-34.

**EXEMPTION OF CUBAN CONSULAR OFFICIALS—CHAPTER 208
AND §208.04, FLORIDA STATUTES**

QUESTION: Is gasoline purchased by a Cuban Consul, stationed in this state, and used exclusively by him in such consular service exempt from the tax imposed upon such product by Chapter 208, Florida Statutes, 1941, particularly Section 208.04, thereof?

To: Honorable Frank S. Wright, Assistant to the Governor, Tallahassee, Florida:

.....

Hence, in my opinion the above question properly is answered in the negative, that is to say, that gasoline purchased in this State and used exclusively by said consul in such consular service is not exempt from the tax imposed by Chapter 208, Florida Statutes, 1941, particularly Section 208.04 thereof.

November 22, 1949—049-556.

COUNTY COMMISSIONERS—APPROPRIATION—GASOLINE TAX
—DIRECT CONTROL OF—FREED OF BUDGET CONTROL—
CHAPTER 26321, ACTS 1949—DUVAL COUNTY

QUESTION: "In view of the specific provisions of Section 3 of Chapter 26321, laws 1949, whereby 20% of the net revenue provided is directly appropriated to the County Commissioners of the counties to be used solely and only for specific purposes, a question has arisen whether or not the revenue accruing to Duval County by virtue of said Chapter 26321 should be under the control of the budget commission or, is the amount so accruing to the County a direct appropriation by the Legislature to the County Commissioners and therefore freed of budget control on the part of said Budget Commission?"

To: *Honorable J. Henry Blount, County Attorney, Jacksonville, Florida:*

.....

Subject to these remarks your question is therefore, answered in the affirmative.

January 12, 1950—050-28.

PETROLEUM PRODUCTS—DIESEL FUEL—EXCISE TAX—GASOLINE—CHAPTERS 208 AND 209, FLORIDA STATUTES 1941

QUESTION: Are the liquid products of petroleum, usually known and designated as diesel type fuel oil, sold in this state at filling stations and other places for use as fuel for the operation of diesel type motor vehicles upon the highways of this state, subject to taxation under Chapter 208, or under Chapter 209, or under either of said chapters, of the Florida Statutes?

To: *Honorable C. M. Gay, State Comptroller:*

Chapter 208, Florida Statutes, levies an excise tax upon the sale of "gasoline or other like products of petroleum, sold in this state." (Section 208.04, Florida Statutes). Chapter 209, Florida Statutes, levies an excise tax on the use of "all combustible gases and liquids used in an internal combustion engine for the generation of power to propel vehicles of any kind or character on the public highways, except such fuels as are subject to the tax imposed by gasoline taxing laws," (Sections 209.01 and 209.02, Florida Statutes) evidently meaning the taxes imposed by Chapter 208 upon gasoline and other like products of petroleum. The mere fact that a fuel is used in an internal combustion engine does not make it subject to tax under Chapter 209, it is only subject to such a tax when it is used in such an engine and is not "gasoline or other like products of petroleum." Gasoline and other like products of petroleum are subject to the tax imposed by Chapter 208, without regard to their use in motor vehicles, while other gases and fuels used in motor vehicles on highways in this state are subject to the use tax imposed by Chapter 209. The line of demarcation is whether the fuel used is gasoline or some other like product of petroleum; what is included in the expression "gasoline or other like products of petroleum" as used in said Chapter 208.

The expression "gasoline, or other like products of petroleum" has appeared in the gasoline taxing laws of this state since the sale

of gasoline has been subject to taxation in this state, beginning in 1921. The term "gasoline" is a generic term and includes fluids of varying chemical composition and different specific gravities (*State v. Parker*, 44 Wyo. 478, 13 P. 2d. 641, text 643). The Century Dictionary and the Encyclopedia Americana defines the term "gasoline" as being a volatile liquid product of petroleum commonly obtained from the distillation of such petroleum. It is stated in 21 Encyclopedia Americana 693 that "since 1932, the earliest record of recorded data, the average octane number of regular grade fuels has risen from 61 to over 73. Premium-grade fuel rating in the same period, have increased from 74 to over 79." In Chambers' Technical Dictionary, Revised Edition, the term "gasoline" is defined as "American term for low boiling petroleum distillates, boiling range about 14° C., to 90° C." We feel that the term "gasoline" is universally understood throughout this state and other states to mean a liquid the chief use of which is a fuel for the propulsion of motor vehicles, motor boats and the like. (*Coleman v. United States*, C. Cl., 37 Fed. Supp. 273, text 276).

In construing the phrase "gasoline or other like products of petroleum" we feel that the legislature intended to use the word "other" in its common usage and to indicate two or more of a class of which gasoline was one. (See *Coleman v. United States*, supra). The phrase has reference to two or more like products of petroleum. The word "like" has been defined as meaning "analogous; equal in quantity, quality or degree, having resemblance; having the same, or nearly the same, appearance, qualities or characteristics; resembling; same in quantity, amount or extent; similar to." (53 C.J.S. 885; and see 25 Words and Phrases 279). The term "if like kind and quality" has been defined as having reference to "quality and suitableness or fitness for the purposes used." (*Maryland Motor Car Insurance Company v. Smith*, Tex. Civ. App. 254 S. W. 526, text 528). The term "gasoline, or other like products of petroleum," as used in the statutes, seems to include gasoline in all of its grades and kinds, and in addition thereto other volatile liquid products obtained from the distillation of petroleum that is similar in appearance, qualities and characteristics, and suitable for the same uses, as gasoline. Such liquid products need not be identical with gasoline, but may be other like products of petroleum similar in nature and subject to like uses and purposes as gasoline. The characteristics of such other products must be such as to permit their use in the same manner and for the same purposes that gasoline may be used. As indicated above gasolines have a wide range of octane count, specific gravity and boiling point, one authority stating that the boiling point may range from 14° to 90° centigrade.

Doubtless there are standards by which the chemistry department of the office of the Commissioner of Agriculture analyse gasoline and determines whether liquids may be classified as gasoline. These standards probably may be used to determine whether a certain product of petroleum is subject to classification as gasoline or a substance similar to gasoline. If such product is to be classified as gasoline or some like product of petroleum, as hereinabove defined, it would seem to be subject to taxation under the gasoline taxing laws although it may also be suitable for use as a fuel in diesel type motor vehicles. The test is whether it is gasoline or some like product of petroleum, as to whether subject to tax under Chapter 208 or under Chapter 209. Any product subject to taxation under Chapter 208 is not subject to tax-

ation under Chapter 209. Chapter 209 was intended to tax those motor fuels not subject to taxation under Chapter 208.

The above observations seem to answer the above question as well as it may be answered under the circumstances.

March 17, 1950—050-132.

See: OPINION NUMBER 049-556

COUNTY COMMISSIONERS—ROAD FUNDS FREED OF BUDGET
CONTROL—CHAPTER 26321, ACTS 1949 APPLICABLE

QUESTION: Where the proceeds received by a county under the provisions of Chapter 26321, Laws of Florida, 1949, exceed the amount previously budgeted for the fiscal year 1949-1950 for road purposes, is the county board authorized to use such excess funds for the purposes set forth in Section 3 of said statute?

To: *Honorable W. Kenneth Barnes, Attorney at Law, Dade City, Florida:*

.....

The question is answered in the affirmative.

July 24, 1950—050-358—049-556.

COUNTY COMMISSIONERS—GASOLINE TAX FUNDS—EXPENDI-
TURES BEYOND APPROPRIATION—CHAPTER 26321,
SECTION 3, ACTS 1949—POLK COUNTY

QUESTION: "The County Commissioners did not in the preparation of its 1949-50 budget anticipate any amount for its portion of the gasoline tax distribution. The revenue for the General Road and Bridge Fund of this County is consequently in excess of what was anticipated.

"Under the local Act providing for a Budget Commission in Polk County are the County Commissioners limited to the amounts appropriated or would expenditures beyond the total amount appropriated be permissible in view of the excess receipts for the year? In case your opinion is to the effect that additional expenditures are permissible under the law please advise me just what procedures are necessary before these expenditures are made?"

To: *Honorable Kirby W. Blain, Deputy Clerk, Polk County, Bartow, Florida:*

In an opinion (number 049-556) issued on November 22, 1949, I made the following statement:

.....

I believe that the above observations are equally applicable to the situation described in your question regarding Polk County.

In my opinion, therefore, the county commissioners in Polk County may utilize the funds in question by properly amending their budget as provided by law.

August 18, 1950—050-403—050-28.

PETROLEUM PRODUCTS—HEXANE—RUBBER SOLVENT, ETC.—
CHAPTER 208, FLORIDA STATUTES NOT APPLICABLE

QUESTION: Are the petroleum products known and designated as rubber solvent, hexane, and similar products of such form and chemical

analysis as to bring them within the purview of Chapter 208, Florida Statutes?

To: *Honorable C. M. Gay, State Comptroller:*

.....
 These products are not considered as gasoline under the Federal Gasoline Taxing Statutes.

Although the products here under consideration have some of the features of gasoline when measured by the rule adopted by this office in our opinion of January 12, 1950 (050-28), a copy of which is furnished herewith, we do not think that such products should be classified as "gasoline or other like products of petroleum, sold in this state"; unless you should find that the product is, or may sometime in the future be, used to some extent as a substitute for gasoline for internal combustion engine use in this State. These observations seem to answer the above question as well as it may now be answered.

TAX ON CIGARETTES

October 10, 1949—049-484.

MUNICIPALITIES—BUDGET—CIGARETTE TAX REVENUE NOT EXCLUDED FROM IMPROVEMENTS—ONLY HALF—MAY BE USED FOR—CRYSTAL RIVER, CITY OF

QUESTION: May the City of Crystal River exclude cigarette tax revenue from its budget, as set by court order, and use funds for improvements?

To: *Mr. Bell W. Land, President, City Council, Crystal River, Florida:*

.....
 From the facts given in your letter it would appear that Section 210.21 (e) of the act would apply in your case.....

I do not believe that the judgment obtained against your city and the operating budget set by the court could alter the mandatory provisions of the act as to use of the funds.

November 1, 1949—049-527.

MUNICIPALITIES—AUDITORIUM—CONSTRUCTION—CIGARETTE TAX FUND—ALLOWED—JOINT STATE—MUNICIPAL PURPOSE—CHAPTER 210

QUESTION: May a municipality use or pledge a part of the funds to be received by it pursuant to the provisions of Chapter 26320, Laws of Florida, Acts of 1949, for the purpose of bearing the expenses, or for the payment of revenue certificates issued for the purpose of bearing the expenses, of the construction of a municipal auditorium?

To: *Honorable Thomas O. Berryhill, City Attorney, Fort Lauderdale, Florida:*

.....
 If the auditorium is found to be for a joint state and municipal purpose it would seem that cigarette tax funds might be used in connection with the construction of the same. It seems probable that the requirements of above quoted subsection (5) of Section 210.03 is

applicable to the application of the funds under Section 210.21, Florida Statutes, as amended.

November 29, 1949—049-567.

**MUNICIPALITIES—NO AD VALOREM TAX—NO BONDED INDEBT-
EDNESS—CIGARETTE TAX—LEVY IN FULL ALLOWED—
CHAPTER 26320, Acts 1949**

QUESTION: Where a municipality in this state levies no ad valorem tax and has no bonded indebtedness, within the purview of Section 210.21, Florida Statutes, as amended, may such municipality qualify and become entitled to cigarette tax money for the purposes enumerated in Subsection (5) of Section 210.03, Florida Statutes, as amended?

To: Honorable C. M. Gay, State Comptroller:

.....
In the light of the above observations we think that the above question should be answered in the affirmative. The said municipality should be permitted to levy the tax in full and not merely a partial tax.

December 7, 1949—049-584.

**CIGARETTE TAX—ASSESSMENT—COUNTY—MUNICIPALITY—
CONSOLIDATION—AD VALOREM MILLAGE—§210.21,
FLORIDA STATUTES**

QUESTION: Where a municipality making its own tax assessment for 1949 had a total valuation of \$52,810,350.00, which required a millage of 15 mills for municipal operation, but, due to the consolidation of county and municipal tax assessing and collecting offices and subsequent valuation by the county, will have a total valuation of about \$42,706,160.00 for 1950, how should Section 210.21, Florida Statutes, as amended, be construed and applied?

To: Honorable C. M. Gay, State Comptroller:

.....
We see no reason why, when there has been a change in assessing authority, we should not use a comparable millage based upon the 1948 county assessment for the purpose of fixing the limitation under said subsection (d) of the section. There would be nothing inequitable in using that formula. The intent and purposes of the legislature would still be the same as if there had been no change in assessing authority. The ultimate effect on the taxpayer would be the same. These observations seem to answer the above question with the qualification that the 1948 assessment should be taken into consideration when fixing the limits provided by Subsection (d) of the section.

December 9, 1949—049-585.

See: OPINION NO. 9-484

**MUNICIPALITIES—CIGARETTE TAX REVENUE—BENEFITS—
DEBT SERVICE MILLAGE REDUCTION REQUIRED—
VERO BEACH, CITY OF**

QUESTIONS: 1. May the city of Vero Beach qualify to receive revenue under the amended cigarette tax law by reducing its electric

light and power rates to the extent of one-half of the money received from cigarette taxes?

2. Since the city of Vero Beach assesses no millage for operating purposes but only assesses millage for debt service purposes, under the amended cigarette tax law, will it be necessary for the city to reduce its debt service millage in order to obtain benefits under this law?

To: Honorable Alex MacWilliams, State Representative, Indian River County, Vero Beach, Florida:

Since no provision is made in the act for reduction of municipally owned utility rates by substituting additional cigarette tax revenue therefor, I do not believe that the funds referred to in Section 210.21, Chapter 26320, Acts of 1949, could be used for that purpose.

All other funds received under the act must be used for improvements in accord with the provisions of Section 210.03 (5), Chapter 26320, Acts of 1949. This revenue could not therefore be directly applied for the purpose of reducing utility rates.

The effect of application of the new revenue to needed improvements for the city, however, would be to relieve the city of that burden and might therefore enable the city to reduce its utility rates. Subject to this comment, question (1) is answered in the negative:

.....

Since Vero Beach has no ad valorem tax for operating costs, its only alternative is to use this portion of its additional revenue in a reduction of its debt service millage. Question 2 is therefore answered in the affirmative.

July 18, 1950—050-340.

**MUNICIPALITIES—CIGARETTE TAX MONEYS—CITY HALL—JAIL
— CONSTRUCTION — COURT JURISDICTION REQUIRED —
§210.03(5), FLORIDA STATUTES—OVIEDO, CITY OF**

QUESTION: May, under Section 210.03(5), Florida Statutes, cigarette tax moneys be used by the Town of Oviedo to construct a combined city hall and jail?

To: Honorable George A. Speer, Jr., Attorney at Law, Sanford, Florida:

The answer to your question would depend primarily upon an interpretation of Section 210.03 of the Florida Statutes.

..... I am reluctant to express an opinion to the effect that power to construct a city hall and jail can be necessarily implied as reasonably flowing from the wording of the statute. I have serious doubts whether the construction of a city jail and city hall can be considered as a state or county function ordinarily performed by the state or county outside the boundaries of a municipality, within the intent of the statute.

Accordingly, it is my suggestion that your question be submitted to a court of proper jurisdiction for a declaratory decree, in order that an authoritative interpretation of the statute on the particular issue may be obtained before any positive action is taken to use the tax moneys in the manner proposed by your letter.

July 24, 1950—050-360.

CIGARETTE TAX REVENUE—USE IN REPAIRING OR IMPROVING
SIDEWALKS—\$210.03, FLORIDA STATUTES—SNEADS,
TOWN OF

QUESTION: May the town of Sneads use the revenue derived from cigarette taxes to defray the cost of repairing and improving the sidewalks within the municipality?

To: Honorable W. T. Stakely, Town Clerk, Sneads, Florida:

..... Your question is therefore answered in the affirmative.

September 6, 1950—050-436.

MUNICIPALITIES—CIGARETTE TAX MONEYS—WHARF—\$210.03
(5), FLORIDA STATUTES—CEDAR KEY, CITY OF

QUESTION: May the city of Cedar Key, Florida, lawfully construct a city pier or wharf and use tax money derived from the sale of cigarettes to assist in paying for the construction of said pier or wharf?

To: Honorable G. A. Birdsey, Mayor, Cedar Key, Florida:

.....

In the light of this Florida decision, (46 So. 2nd 876), I am inclined to doubt that the wharf could be considered a street or bridge within the terms of subsection 5 of Section 210.03, supra.

To be absolutely sure on this matter, probably the best course for the city to take would be to bring a suit to validate the bonds or certificates which the city intends to issue either in validation proceedings or in a declaratory judgment proceeding, setting up the pledge of the cigarette tax money as well as the pledge of revenues derived from berthing rentals in the petition. In such proceedings the question is whether these wharves are extensions of the streets of the city or are otherwise facilities the construction of which may be financed in part from cigarette tax proceeds under the provisions of Section 210.03(5). This is merely suggestive in that it is somewhat doubtful in the light of the decision in the Pensacola case as to whether or not a bonding house would be interested in buying these bonds until a validation decree has been obtained and passed by the Supreme Court of Florida.

December 8, 1950—050-550.

CIGARETTE TAX FUNDS—MAINTENANCE STATE ROAD
TO SERVE AS MUNICIPAL STREET—\$210.03, F. S.
—OKEECHOBEE, CITY OF

QUESTION: May the City of Okeechobee expend monies from its cigarette tax receipts for the maintenance or rebuilding of that portion of a state designated road, lying within the corporate limits, which road also serves as a municipal street?

To: Honorable G. C. Durrance, City Attorney, Okeechobee, Florida:

.....

..... the question is to be answered in the affirmative.

**TAX ON SALES, USE AND CERTAIN TRANSACTIONS
(SALES TAX)**

October 27, 1949—049-518.

**SALES TAX LAW—"PERMANENT RESIDENTS"—DEFINITION—
RESIDENCE—LENGTH OF TIME—PARTICULAR LODGING
ESTABLISHMENT—CHAPTER 26319, ACTS 1949**

QUESTIONS: (1) As used in Chapter 26319, Laws of Florida, Acts of 1949, also known as Senate Bill 17-X, the Limited Sales Tax law, do the words "permanent residents" refer to permanent residents of Florida; That is to say, citizens of the State of Florida, or do they refer to a state of residence in any given abode?

(2) If a citizen of the State of Florida should occupy a given abode for less than six months and through necessity or choice move to another abode, may such person under this law obtain a return of the tax which may have been imposed upon him during such period of residence in the first abode?

(3) Is it not the intent of the law that a person who is a citizen of Florida; that is to say, a bona fide resident, a qualified elector of Florida, that such person should under all circumstances be exempt from the imposition of the tax found in this law with respect to residence in any abode in Florida?

To: Honorable Alex McWilliams, State Representative, Indian River County, Vero Beach, Florida:

.....

(1) It is clear from the foregoing that the words "permanent resident" as indicated by the definition supra refers to a time of residence by any person in any particular lodging establishment and the definition is simply and purely for the purpose of determining whether or not the resident must pay the tax.

(2) There is no provision in the law that would allow a person to build up the period of six months residence by adding residence in various and sundry hotels, apartment houses, rooming houses, etc., over the state in order to qualify for the exemption and since the law itself has defined what a permanent resident shall be, it seems that in order to be eligible for a refund of the tax, a person must reside in one hotel, apartment house, rooming house, tourist or trailer camp, for a period in excess of six months.

(3) The intent of this law was to define a permanent resident as above indicated based on time of residence as a guest in any one hotel, apartment house, etc., and that alone, and to exempt people who have resided or in the future will reside continuously in any such place for the required period, and to exact tax from all transient guests regardless of whether they be citizens of Florida or citizens of some other state. For example, a person might be a permanent resident of a hotel in one city, having lived there for a period of over six months prior to November 1, 1949, and thus he would not be subject to the tax for that particular lodging establishment but if he should decide to go to the coast during three months of summer and rent an apartment house, he would be required to pay the tax on that rental.

July 11, 1950—050-335.

FLORIDA SALES TAX STATUTES—ENFORCEMENT—WORTHLESS
CHECKS—CHAPTERS 212, 832, FLORIDA STATUTES

QUESTIONS: 1. When a person issues a check in payment of sales taxes due and payable under Chapter 212, Florida Statutes, without having funds in the bank for payment, or some arrangement or understanding with the said bank for payment, is the issuance of such check in violation of Chapter 832, Florida Statutes?

2. Where a taxpayer issues a bad check in payment of taxes due and payable under Chapter 212, Florida Statutes, does he violate any of the criminal provisions of said chapter?

3. What proceedings are available, under the provisions of Chapter 212, Florida Statutes, or otherwise, for the enforcement of the payment of the taxes levied and assessed under and by virtue of said Chapter 212?

To: Honorable C. M. Gay, State Comptroller:

.....

In conclusion it may generally be said that the giving of a worthless check in payment of taxes then accrued is not in violation of Chapter 832, Florida Statutes; however, if it can be shown that the intent and purposes of the check was to delay the issuance of the tax warrant and to gain additional time before the State Comptroller starts enforcement procedure for the collection of the taxes, such check might then be within the purview of the statute. This seems to answer the first question as well as it may be answered.

Second question above.—If it may be sufficiently shown that the giving of a worthless check in payment of taxes under Chapter 212, Florida Statutes, was a step in some taxpayer's scheme and "wilful intent to evade payment of any tax imposed under" Chapter 212, Florida Statutes, such action on the part of the taxpayer might be within the purview of Section 212.12, Florida Statutes, which provides that "in case of . . . a wilful intent to evade payment of any tax imposed under this chapter, in addition to the other penalties provided by law, the person . . . wilfully attempting to evade the payment of such tax shall be liable . . . for fine and punishment as provided by law for conviction of a misdemeanor." The obtaining of evidence and proof sufficient to sustain a conviction under these circumstances might be difficult to obtain in many cases. This, likewise, is a conditional answer to the second question.

Third question above.—This question seems to require a review of the criminal provisions contained in Chapter 212, Florida Statutes, in so far as they provide machinery for the collection of sales taxes. Sections 212.03, 212.04 and 212.05, Florida Statutes, declare the operation of certain businesses to be the exercise of taxable privileges and levies a sales tax as a condition to the operation of such businesses. Under Section 212.06, Florida Statutes, these taxes are obligations of the operator of the business or the seller, who is required to make payment thereof to the State; although such operator is required to pass the said sales taxes on to the purchaser or consumer (Section 212.07, Florida Statutes.) The taxes accruing during any month are

due and payable on the 20th of the following month and delinquent on the 21st of said following month. (Section 212.11, Florida Statutes). We call your attention to the following penalties in connection with the enforcement of the sales tax laws of this State:

.....

These observations seem to answer the third question as nearly as the same may be here answered. The main problem of the Comptroller in the collection of delinquent taxes under Chapter 212, Florida Statutes, is probably locating assets of the delinquent taxpayer from which collections may be made. The lien of the tax, which attaches when the tax warrant is filed in the office of the Clerk of the Circuit Court is that of a judgment of the Circuit Court duly entered and recorded in the judgment lien record. The priorities of the lien seem to be the same as that of a judgment. Homestead and other exemptions from the levy of executions are probably applicable to such tax warrants.

FINANCIAL MATTERS, GENERALLY

March 31, 1949—049-136.

BOARD OF CONTROL—CONTRACT SPECIFICATIONS—WAGE SCALE—LABORERS—MECHANICS—FEDERAL AGENCY —FLORIDA RATE—NO CONFLICT

QUESTION: Is there any conflict between the wage scale as set up in the contract specifications complying with Federal law and regulations, and Section 215.19, Florida Statutes of 1941; and what will be the effective wage scale on the above project?

To: Board of Control, Florida State University, Tallahassee, Florida:

.....

There is no conflict between the rate of wages set up in the specifications under the Federal law and regulations, and Section 215.19, of the Florida Statutes.

.....

Both the Federal rate of wages set up in the specifications and the Florida rate required by Section 215.19 are parts of the contract. The contractor bid with full knowledge that both were a part of the contract and it will be his duty to comply with both. In order to comply with the Federal scale, the contractor may at no time pay less than the scale set up in the specifications and, in order to comply with the Florida rate, may at no time pay less than the prevailing rate.

The net result is an effective wage rate as set up by the Federal agency in the specifications or as required by the Florida rate, whichever is the higher at any time. There can be no conflict.

August 31, 1949—049-418.

BOARD OF CONTROL—DUTIES—DISPUTES—CONTRACTS—RATE OF WAGES—PUBLIC BUILDINGS—§215.19, FLORIDA STATUTES

QUESTION: Where the Board of Control has entered into a contract for the construction of public buildings, what are its duties under Section 215.19, Statutes of 1941, when there is a complaint that the con-

tractor is paying less than the prevailing rate of wages, and what complaints should be recognized by the Board?

To: The Board of Control:

.....

When proper complaint is received, it is your duty to promptly try to settle or adjust the dispute. This you may do by your architect or other competent representative. If you should fail to settle the argument, it will then be your duty to promptly refer the matter to the Secretary of State for his determination.

August 18, 1950—050-400.

**STATE SCHOOL FUND—MUNICIPALITY—OVERPAYMENT OF
INTEREST—REFUND**

QUESTION: May overpayments of interest made by a municipality upon bonded indebtedness issued by it and held by the State School Fund be refunded when such overpayments were made over a period of time extending from February 1, 1942, to February 1, 1950?

To: Honorable C. M. Gay, State Comptroller:

.....

..... the above question must be answered by stating that the limitations contained in said statute must be applied and that only overpayments made within the purview of the said limitations may be refunded under the statute.

It is believed that the matter of refunding the overpayment of said interest against which the limitation of the statute applies and precludes payment might properly be submitted to the Legislature for a determination by legislative act.

BONDS; STATE, COUNTY, MUNICIPAL

March 30, 1950—050-164.

**HENDRY COUNTY HOSPITAL AUTHORITY—REVENUE CERTIFI-
CATES—MORTGAGE—NO AUTHORITY UNDER CHAP-
TER 24551, ACTS 1947**

QUESTIONS: 1. Is the Hendry County Hospital Authority created by Chapter 24551, Laws of Florida, 1947, empowered to issue certificates of indebtedness (interest rate not to exceed 4%) to assist in financing the construction and equipping of a hospital?

2. May the Authority, pursuant to the law set forth in the question above, execute a valid mortgage encumbering the real estate and improvements thereon of the hospital for the purpose of acquiring additional funds for completion of said hospital?

To: Mr. Earl R. Murray, Chairman, Hendry County Hospital Authority, Clewiston, Florida:

.....

Therefore, both questions are answered in the negative.

COMPULSORY PAYROLL TAX

March 5, 1949—049-85.

**WORKERS BENEFITS—COMPULSORY PAYROLL TAX—VALIDITY
QUESTIONABLE—STATE INCOME TAX PROHIBITED**

QUESTION: Would a payroll tax imposed upon workers on a compulsory basis to be used solely for the payment of benefits to such workers be a tax on income which is prohibited by the language of Section 11 of Article IX of the Constitution of Florida?

To: *Honorable Raymond Barnes, Chairman, Florida Industrial Commission, Tallahassee, Leon County, Florida:*

.....

This question cannot be answered with any degree of assurance.

.....

..... only the court in a proper case, considering a law enacted, with the terms, provisions and details thereof before it, could with finality and assurance provide the answer to the above question.

CHAPTER XII

HOMESTEADS AND EXEMPTIONS

METHOD OF SETTING APART HOMESTEAD AND EXEMPTIONS

March 14, 1949—049-101.

CLERKS CIRCUIT COURTS—DUTIES—DECLARATIONS OF DOMICILE—AFFIDAVITS—RECORDED AND FILED—CANCELLATION

QUESTION: Is there any authorized manner of cancelling an affidavit of domicile filed under Section 222.17, Florida Statutes of 1941; if not, is it proper for the Clerk of the Circuit Court to file and record an affidavit of a person who has made such declaration of domicile in effect cancelling such declaration or otherwise declaring that he is no longer domiciled in the State?

To: Honorable E. B. Leatherman, Clerk of Circuit Court, Dade County, Miami, Florida:

The authority for declaring a domicile is set up in Section 222.17 of the Statutes. No specific provision is made for cancelling such declaration. However, when the declaration of domicile no longer recites the truth, the person involved should be permitted to correct the record declaration of domicile; and it is my opinion that he may do so by appropriate affidavit which should be filed and recorded in the manner provided in Section 222.17 for filing and recording the declaration of domicile. To what extent the declaration or the affidavit purporting to cancel the declaration may be effective as proof of domicile is not for me to determine.

May 4, 1949—049-192.

HOMESTEAD EXEMPTIONS—PERSONS ENTITLED—NOT REQUIRED TO BE REGISTERED VOTERS

QUESTIONS: 1. Does an individual home owner have to be a registered voter in order to be entitled to homestead exemption?

2. Does a tax assessor have authority to deny homestead tax exemption merely because the claimant is not a registered voter?

To: Honorable Paul E. Sawyer, Legal Advisor to County Officers, Key West, Florida:

.....

Both questions are answered in the negative.

April 1, 1950—050-167.

TAXATION—HOMESTEAD EXEMPTIONS—RESIDENCE REQUIREMENT—§7, ART. X, FLA. CONST.

QUESTION: May a man legally residing in one county of this state claim homestead exemption from taxation upon residential prop-

erty owned by him in another county of the state upon which resides "another or others legally or naturally dependent upon said person"?

To: Honorable C. M. Gay, State Comptroller:

.....
Under §7, Art. X, of the state constitution, "every person who has the legal title or beneficial title in equity to real property in this state and who resides thereon and in good faith makes the same his or her permanent home, or the permanent home of another or others legally or naturally dependent upon said person" is entitled to the homestead exemption from taxation in said section described.

..... To require the owner to reside upon the property in order for him to claim the exemption for the benefit of "another or others legally or naturally dependent upon said person" would seem to render the quoted language in the constitution redundant and unnecessary in the statute. It seems that if the quoted language is to be given any effect whatsoever in construing the section that it relates to property owned by one person but occupied as the permanent home of "another or others legally or naturally dependent upon said person." Under this construction of the said section the above question should be answered in the affirmative. (See also observations of Harold B. Crosby and George John Miller, Volume II, Number 3, University of Florida Law Review, Fall 1949, pages 363 and 364, on same question).
.....

April 25, 1950—050-214.

TAXATION—HOMESTEAD EXEMPTIONS—GOVERNMENT EMPLOYEES—ELIGIBILITY—§7, ART. X, FLA. CONST.

QUESTION: Where a resident and citizen of Florida, now entitled to tax exemption under Section 7, Article X, of the State Constitution, upon certain real property owned and occupied by him, obtains an appointment or employment in federal government service that requires him to reside in Washington, District of Columbia, is he entitled to homestead tax exemption under said constitutional provisions?

To: Honorable C. M. Gay, State Comptroller:

.....
..... it is apparent that the mere absence of one holding a government office or position in Washington, D. C., or elsewhere, is not sufficient of itself to prove abandonment of such person's homestead in this State, even when such homestead is leased or rented to others. The question of whether or not a person has abandoned his homestead so as to no longer be entitled to tax exemption thereon, under Section 7, Article X, of the State Constitution, is one of fact to be determined by the tax assessor by the application of the above rules and regulations, as declared by the courts, to the facts in each case. It is the prerogative of the tax assessor to ascertain the facts in each case and measure them by the rules and regulations above set out for their determination.

June 12, 1950—050-284.

HOMESTEAD EXEMPTION—INCOMPETENTS—LANDS PURCHASED AS HOME—§7, ART. X, FLA. CONST.

QUESTION: Where a county judge, in connection with the administration of the estate of an incompetent, either authorizes or directs that the guardian purchase real property, pursuant to §745.03, F. S., to be used as the home of the said incompetent, and the home is so purchased and used as the permanent home of the incompetent, is such property within the purview of §7, Art. X, of the State Constitution?

To: Honorable Victor Hutchins, County Judge, Orange County, Orlando, Florida:

.....
It is the duty of the Tax Assessor to ascertain the facts in each such case and determine whether or not the ward is vested with any equitable or legal title in and to the home wherein he resides, under the law and statutes above referred to. If he finds that the property was purchased with funds from the estate of the ward, whether title be taken in the name of the ward or in the name of the guardian, and that the ward is residing on the property and making it his permanent home, or the permanent home of his family, exemption should be granted.

..... This opinion was not intended to be specific as to any particular parcel of land but as a general guide from which tax assessors may determine the question of the application of Section 7, Article X, of the State Constitution, to homestead claims in behalf of incompetents.

August 31, 1950—050-427.

HOMESTEAD EXEMPTION—RETIRED EMPLOYEES ENTITLED—ART. X, §7, FLA. CONST.

QUESTION: Where an employee holding the fee simple title to real estate establishes thereon a housing project for retired employees, under a plan whereby the former employee is purchasing through monthly payments a life estate in the premises he occupies, with right of reversion in the employer, but the employee actually resides thereon and in good faith makes it his permanent home, is the occupant entitled to the exemption from taxation, under §7, Art. X, of the State Constitution?

To: Mr. Walter E. Keyes, Secretary-Director, Florida State Improvement Commission:

..... the question is to be answered in the affirmative.

August 3, 1950—050-372.

LEVY FOR HOSPITALS FOR INDIGENTS—CHAPTER 19736, SPECIAL ACTS 1939—LEVY FOR FIRE CONTROL UNITS—§125.26, F. S.—NOT ASSESSMENTS FOR SPECIAL BENEFITS—ART. X, §7, FLA. CONST.

QUESTIONS: (1) Is the tax authorized by Chapter 19736, Special Acts of 1939, for the purpose of providing hospital care to indigent inhabitants of Clay County, chargeable on homestead property?

(2) Is the tax authorized by Section 125.26 for the establishment and maintenance of county fire control units chargeable on homestead property?

To: *Honorable Claude H. Smith, Tax Assessor, Clay County, Green Cove Springs, Florida:*

.....
 the point involved in your questions with which we are here concerned is whether or not the taxes imposed by Chapter 19736, Special Acts of 1939, and those authorized by Section 125.26, Florida Statutes, are "assessments for special benefits." If not, then such taxes would not be chargeable on homesteads.

.....
 neither the tax authorized by Chapter 19736, Special Acts of 1939, nor the tax authorized by Section 125.26, Florida Statutes, is chargeable on homestead property. Therefore, your two questions are both answered in the negative.

November 22, 1950—050-535.

**DECLARATION OF INTENTIONAL DOMICILE IN FLORIDA—
 ACKNOWLEDGMENT—SECTION 222.17, FLORIDA STATUTES**

QUESTIONS: 1. Must the declaration of intention to domicile in Florida as prescribed in Section 222.17, Florida Statutes, be subscribed to before the clerk of circuit court in whose office such declaration is filed?

2. May clerk of circuit court record such declaration when filed by mail?

3. Is the clerk entitled to same recording fee when said declaration is filed by mail?

To: *Honorable George J. Dykes, Clerk of Circuit Court, Lake County, Tavares, Florida:*

I find nothing in the statutes which provides that such declaration of intention to domicile in Florida must be subscribed to in the presence of the clerk of the circuit court it is sufficient if said declaration is subscribed to before any officer authorized to take acknowledgments.

.....
 Therefore, the answer to your second question is in the affirmative.

.....
 the clerk of the circuit court in whose office such declaration is filed is entitled to collect a statutory fee of \$1.00 for recording same, whether filed by mail or in person.

December 8, 1950—050-544—050-284.

**TAXATION—HOMESTEAD EXEMPTIONS—EFFECT OF
 INSANITY OF HOMESTEADER—ARTICLE X, 7,
 FLORIDA CONSTITUTION**

QUESTION: Where a person residing in this State and lawfully entitled to homestead exemption, is, by reason of insanity, confined to an institution, is his estate entitled to homestead exemption from

taxation when the said home is rented by his guardian or other legal representative?

To: Honorable C. M. Gay, State Comptroller:

Under Section 7, Article X, of the State Constitution, "every person who has the legal and beneficial title in equity to real property in this State and who resides thereon and in good faith makes the same his or her permanent home, or the home of another or others legally or naturally dependent upon said person" is entitled to homestead exemption from taxation. The Constitution merely requires that the homestead claimant be the owner of the property and that he or someone dependent upon him make the same his or their home. There is no requirement that a homestead claimant be sui juris (see opinion of this office of June 12, 1950, 050-284; 1947-8 Biennial Report 195). Although the owner of the property may be insane where someone dependent upon him occupies the home there would be no abandonment of the homestead by the owner. The owner being insane there can be no presumption that he has abandoned his homestead.

Although a person may be insane and incompetent of making a decision to abandon his homestead, we see no valid reason why his duly qualified guardian or other legal guardian may not abandon the same for him. A temporary renting of the home would not necessarily be an abandonment of its homestead character. It is within the jurisdiction of the tax assessor, and the board of county commissioners, upon appeal for equalization, to ascertain from all the facts and circumstances whether or not there has been an actual abandonment of the homestead character. Where a person is sui juris the fact of his absence from his home may be an element to be considered in determining abandonment; such absence for an extended period of time might raise a presumption of abandonment. In the case of an insane home owner no such presumption may be indulged in; the question of abandonment for the insane owner must appear from the actual facts and circumstances. Under these circumstances the fact of rental of the homestead alone, although evidence of abandonment, does not of itself prove abandonment; other evidence of abandonment should be evident.

The above question does not appear to be subject to exact answer without the examination of all the circumstances and facts in the case; however, this opinion may be used as a guide by the taxing officials to make a determination of the question from the facts and circumstances.

December 18, 1950—050-565.

**HOMESTEAD TAX EXEMPTION—HOME—INCOMPLETE SALE
—EFFECT OF—ARTICLE X, §7, FLORIDA CONSTITUTION**

QUESTION: Where a person, entitled to homestead tax exemption on the first of January of a tax year, enters into a contract of sale during said year, wherein and whereby he agrees to make conveyance of said property and surrender possession upon the making of certain payments, but said contract is not completed and the deed and possession given until sometime in the following year, is either the

grantor or the grantee entitled to homestead tax exemption under Section 7, Article X, of the Constitution?

To: *Honorable C. M. Gay, State Comptroller:*

.....

The above question is answered by stating that, under the circumstances involved in this case, the vendor in possession on January 1, 1950 was entitled to homestead tax exemption. Each such case should be determined upon its own facts and circumstances.

EXEMPTION OF HOMESTEAD FROM TAXATION

January 5, 1950—050-3.

EXCLUDED LAND—BOND DEBTS—IMPROVEMENTS ASSESSED

QUESTION: Where lands subject to municipal bonded indebtedness are subsequently excluded from the municipal corporate limits by legislative act, and after such exclusion a building is erected thereon, is the building also subject to the then existing debt service tax of two mills?

To: *Hon. Edward L. Gerson, Punta Gorda City Attorney:*

.....

..... the question is to be answered in the affirmative.

CHAPTER XIII

EDUCATION

SCHOOL CODE; SCOPE, ORGANIZATION AND DEFINITIONS

December 21, 1949—049-620—049-475.

STADIUM—COOPERATIVE CONSTRUCTION—SCHOOL LANDS— AGREEMENT FOR RENT—\$227.04, FLORIDA STATUTES

See Opinion No. 049-475

QUESTIONS: 1. Can county or school district tax funds be legally used for the building of an athletic stadium cooperatively by a county board of public instruction and a local non-profit organization?

2. In the event that the building of the stadium was to be financed entirely by funds raised by the Club (DeSoto Athletic Booster's Club), could the school board deed to a non-profit organization, to be formed solely for the purpose of building the stadium, sufficient lands to accomplish that purpose, with the understanding that when all bonds were paid, the property would be deeded back to the school board?

3. Could the school board enter into a lease with this non-profit organization, assuming it gets title to the land and builds the stadium, whereby it would agree to pay, as rental for the stadium, the sum of fifty cents per game on each seat sold, over the years until all bonds have been paid, and agreeing not to use any other facilities during such period of time, for football?

4. If the stadium is built as above outlined, could the DeSoto County Athletic Association take over the actual maintenance of the grounds and stadium during the period of the lease?

To: Honorable Thomas D. Bailey, Superintendent of Public Instruction:

.....

Subject to the above general review of the laws involved, I believe your questions may be answered as follows:

Question one is answered in the affirmative subject to the limitations set forth.

Questions 2, 3 and 4 are answered in the affirmative subject to the limitations set forth, and provided 3 is intended to refer to the use of local facilities as set forth in the question.

January 23, 1950—050-32.

TRUSTEES—EMPLOYMENT OF ATTORNEY—USE OF SCHOOL FUNDS—POWERS OF SCHOOL BOARD—CHAP. 436, 442, 307, F.S.—SEE OPINION NO. 041-704

QUESTION: May a county board of public instruction legally pay with county school funds a fee for an attorney who represented the school trustees in a mandamus action brought by a school principal

to test the question of whether the trustees had to show cause for rejecting his nomination?

To: *Hon. Woodrow M. Melvin:*

.....
An excellent and exhaustive summation of the laws involved in this question was set forth in an opinion issued by my predecessor in office on December 3, 1941 (Attorney General's opinion 041-704).....

.....
I concur in the conclusions reached in the above quoted opinion and believe that the suggested procedure in its final paragraph should be followed.

I do not think, however, that discretionary authority is irrevocably removed from a county board of public instruction to pay a fee under the circumstances set forth in your question.

In other words, if the county board in the exercise of its sound and impartial discretion, believes that the suit in question served a useful purpose in resolving a legal problem which affects the welfare of the public schools, and that therefore the public school system not only in Santa Rosa county but in all counties throughout the state were directly benefited from the work performed in the preparation of this suit, I am of the opinion that the Santa Rosa County Board of Public Instruction is legally authorized to pay the fee in question if it determines that it is appropriate to do so.

STATE PLAN FOR PUBLIC EDUCATION

August 17, 1950—050-397.

DUVAL COUNTY BUDGET COMMISSION—NO CONTROL OF SCHOOL FUNDS

STATEMENT AND QUESTIONS: "In view of the 1947 Minimum Foundation Program Law, Chapter 23726 as amended by Chapter 25363 in 1949, do Special Acts, Chapter 14678, Acts of 1931 and Chapter 22270 Acts of 1943 permit the Duval County Budget Commission

1. To reduce the total monies in the Duval County School Budget as approved by the County Board of Public Instruction of Duval County and the State Department of Education?

2. If the first question is answered in the affirmative, then the second question is Does the Budget Commission have the authority to eliminate or reduce items in the County School budget, e.g., adult evening classes, distributive education classes, etc.?

To: *Honorable Thomas D. Bailey, Superintendent, State Department of Education:*

.....
Your questions are therefore answered in the negative.

COUNTY SCHOOL SYSTEM

March 11, 1949—049-100.

TRUSTEES—NOMINATIONS—REAPPOINTMENT—PRINCIPALS—INDUSTRIAL STAFF—TIME PROVIDED BY LAW

QUESTION: What is the time prescribed by statutes 230.43, Section 230.43, Section 2 and 231.35, Section 2 for the nomination of prin-

cipals and instructional personnel by the district trustees to the county school board for reappointment?

To: Mr. Robert E. Allen, Douglas-Brown High School, Okeechobee, Florida:

.....
It is my opinion that the trustees must nominate supervising principals and principals for reappointment at least eight (8) weeks before the close of school, and no sooner than (12) weeks before the close of school. The trustees must nominate instructional personnel for reappointment at least (6) weeks before the close of school, and no sooner than ten weeks before the close of school.
.....

March 24, 1949—049-129.

SCHOOL BONDS—SALE—FUNDS—DISPOSITION—ORIGINAL
PROJECT ONLY

QUESTION: What disposition should be made of funds derived from the sale of bonds issued by a small special taxing district, which existed prior to the consolidation act of 1947, Chapter 23726, Section 230.34, for a building project that was never built.

To: Honorable Thomas D. Bailey, State Superintendent of Public Instruction, Tallahassee, Florida:

.....
Viewing this question in the light of the Miami Bank and Trust Co., decision, I am of the opinion that these funds can only be used to build the original project for which the bonds were issued, or to repurchase the bonds or redeem them, whichever may be possible and most advantageous to the district.

April 1, 1949—049-138.

TRUSTEES—AUTHORITY—NOMINATION—PERSONNEL—ALL
POSITIONS IN QUESTION

Question: Do the Board of Trustees have jurisdiction over the appointment of:

Director of Instruction

President, Registrar, and teaching faculty of Palm Beach
Junior College

Director of Vocational Education

Supervisor of Adult and Veterans Education

Supervisor of On-the-Job Training

Coordinator of On-the-Job Training

Supervisor of Home Economics

Supervisor of Music

Supervisor of Maintenance

Supervisor of School Lunchrooms

Supervisor of Supplies and Equipment

County School Nurses

Supervisor of Transportation

County Attendance Officers

To: *Honorable John W. Turrentine, 608 Comeau Building, P. O. Box 2642, West Palm Beach, Florida:*

..... I am of the opinion that the trustees have the authority to nominate personnel for the positions in question.

A Supervisor of Maintenance may be nominated by the trustees under Section 235.12, Florida Statutes, 1941.

..... Therefore, the school trustees are given the power to nominate personnel for the positions of Supervisors of School Lunchrooms, Supplies and Equipment, Transportation, County School Nurse and County Attendance Officer.

April 9, 1949—049-152.

SCHOOL BOARD—LIBERTY COUNTY—TRUSTEE—CONSTRUCTION WORK—SEALED COMPETITIVE BIDS REQUIRED

QUESTION: Can the Liberty County School Board hire a school trustee to repair, maintain, or construct school buildings?

To: *Honorable W. Olin Shuler, Superintendent of Public Instruction, Liberty County, Bristol, Florida:*

I am of the opinion that Section 230.23 (12 (i), Florida Statutes, 1941, prohibits a county school board from hiring a school trustee for any of the above enumerated services.

However, if the county board should call for bids for such work as is described in the question, a trustee may lawfully submit a sealed competitive bid and be awarded a contract if he is the successful bidder.

April 15, 1949—049-158.

TRUSTEES—CONSTITUTIONAL POWER—NOMINATION—ALL MEMBERS TEACHING STAFF

QUESTIONS: (1) In the rejection of a recommendation made by the County Superintendent of Public Instruction, is it necessary that the trustees file with the rejection a specification of the cause for such rejection or may they simply, without explanation, reject a nominee?

(2) If the trustees are required to file a specification of the grounds of rejection, is there any limitation upon the matters that may be considered as constituted good cause for rejection, and if so, what are those limitations?

(3) May the County Superintendent of Public Instruction, should he so desire, recommend for consideration of the school board a person for employment as a principal of either of two high schools in the district, who was previously rejected by the trustees of the school system?

(4) Where the trustees have presented no nominee for the office of principal for either of two high schools in the district, but have simply rejected the recommendation made by the County Superintendent, is there any duty on the part of the Board of Public Instruction of a certain county to take any action upon the rejection of the trustees of such recommendation?

To: Honorable Woodrow Melvin, Attorney for County Board of Public Instruction, Santa Rosa County, Milton, Florida:

.....

There is no legal obligation on the part of the trustees to give their reasons or to show cause for declining recommendations of the County Superintendent.

Any such requirement would be a definite restriction of their constitutional power to select as they see fit. Whether their reasons are good or bad is a political, not a legal question. This makes answer to your second question unnecessary.

Where the persons recommended by the County Superintendent are legally, morally and professionally qualified for the positions, it is my opinion that their rejection by the trustees does not of itself disqualify them for subsequent appointment by the County Board if the trustees should fail to make nominations for the positions.

Where the trustees have rejected persons recommended by the County Superintendent, the County Board has no duty whatever unless and until the trustees fail to nominate persons who are legally, morally and professionally qualified within such reasonable time as may be allowed by statute or County Board regulation. It is only upon failure of the trustees to nominate in such time that the County Board assumes the duty of considering the recommendations of the County Superintendent and making the selection. I might add that even in cases where the statutory time, or the time set up in regulations of the County Board under Section 231.35, for filing nominations by the trustees has passed, the County Board should accept nominations of suitable persons made by the trustees up to such time as the County Board may enter into contract, or obligate itself to enter into contract, with some other qualified person person.

July 30, 1949—049-350.

**SCHOOL CHILDREN—COMPULSORY PHYSICAL EXAMINATIONS
—CHRISTIAN SCIENTIST—NOT EXEMPT**

QUESTION: "Are school children, whose parents are Christian Scientists, exempt from compulsory physical and dental examinations as provided in Section 230.23 (8-f) Florida Statutes?"

To: Honorable Thomas D. Bailey, Superintendent, Department of Education:

.....

The question is therefore answered in the negative.

September 15, 1949—049-439.

**COUNTY BOARD PUBLIC INSTRUCTION—BOND CONSTRUCTION
FUNDS—BUY AND LAY WATER PIPE—RESURFACE
CITY STREETS**

QUESTIONS: May a county school board buy and lay water pipe beyond the school property to connect with the city water supply, the school being within the city limits; and may bond construction funds be used for this purpose?

2. May said board grade and surface six blocks of already existing city streets to provide adequate ingress and egress to the proposed school building?

To: *Honorable Thomas D. Bailey, Superintendent of Public Instruction.*
CAPITOL:

.....
..... The first question, therefore, is answered in the affirmative.
.....

For the foregoing reasons, the second question is answered in the negative.

September 23, 1949—049-450.

PUBLIC INSTRUCTION, BOARD OF—USE SCHOOL FUNDS—
GRADE CITY STREETS—ADJACENT SCHOOL PROPERTY
—NASSAU COUNTY

QUESTION: May the Board of Public Instruction of Nassau County pay for grading a city street if such grading is necessary in order to make the level of said street conform to the level of adjacent school property?

To: *Mr. Thomas G. Hall, Attorney, Board of Public Instruction, Nassau County, Fernandina, Florida:*

.....
Your question is therefore answered in the affirmative.

October 7, 1949—049-478.

COUNTY BOARD PUBLIC INSTRUCTION—SCHOOL SITE—DEED—
MINERAL RESERVATION IN—ACCEPTABLE

QUESTION: "Can the the Polk County Board of Public Instruction accept title to a school site, build facilities on the site where the donor of the said site makes a mineral reservation in the deed as follows:

"There is reserved unto the party of the first part title to all minerals at a depth greater than one hundred fifty feet (150') below the surface of said land, together with the privilege to explore and drill for and to mine and develop same; provided however, that said reserved privilege to explore, drill, mine and develop shall be exercised by methods and at locations to be approved by the surface owner which will avoid physical damage to and interference with the general appearance of the buildings and structures then upon said land and the surrounding area used in connection therewith, and interference with their efficient and comfortable use and enjoyment, which approval the surface owner shall not unreasonably withhold in any case."

To: *Honorable Thomas D. Bailey, State Superintendent of Public Instruction:*

.....
In answering your question, I do not think that a mineral reservation contained in a deed to a county school system would conflict with any requirement of the law if the reservation in question did not interfere in any way with the use of the land for school purposes.

The reservation in question appears to be of such a nature that it would not unreasonably interfere with the use of the land for school purposes. Your question is therefore answered in the affirmative.

December 20, 1949—049-608.

SCHOOL BOARD—GENERAL POWERS—PROPERTY—EXCHANGE
OF REAL ESTATE—\$230.23 F.S. '41

QUESTION: Can a county Board of Public Instruction, after a motion duly carried and recorded on its minutes, legally put into effect a proposal to deed property owned by the Board of Public Instruction to the State Improvement Commission in exchange for property to be deeded to said Board of Public Instruction by the County Commissioners of that county?

To: *Hon. Thomas D. Bailey, Superintendent of Public Instruction, Tallahassee, Florida:*

.....

Subject to these remarks, your question is answered in the affirmative.

March 11, 1950—050-123.

SCHOOL BOARD MEMBER—VACANCY—COMMISSION TO FILL—
APPOINTMENT BY GOVERNOR—INDIAN RIVER COUNTY

QUESTION: A vacancy has occurred by resignation with respect to the office of a member of the school board of Indian River County, the officer resigning having been elected in 1948 for the four-year term expiring in January 1953. The Governor has filled this vacancy by appointment. Should the commission to be issued under such circumstances be for the unexpired term of this resigned board member or until the first Tuesday after the first Monday in January of 1951?

To: *Honorable R. A. Gray, Secretary of State:*

.....

Our Supreme Court on two occasions has issued advisory opinions with respect to the filling of vacancies on school boards, such being reported in 19 So. 2d. 198, and 31 So. 2d. 854.

.....

..... certain wording found in these two opinions cannot be harmonized.

If I were required to assume a position with respect to this question it would be to follow the law set forth in the advisory opinion reported in 19 So. 2d. 198. If such opinion were followed, then the appointment and commission of this appointee should be for the unexpired term of the school board member whose resignation resulted in the vacancy here dealt with. However, serious doubt exists with respect to this question because of the apparent lack of harmony found in these two opinions. Hence, it is recommended that the matter be referred to Governor Warren with copy of this opinion for his consideration of the advisability of submitting the question to the Supreme Court for an advisory opinion as to the Governor's duties under the constitution with respect to the filling of this vacancy. Should the Governor see fit to follow this suggestion, I would be glad

to prepare proper request of the court for the Governor in connection with his application for an advisory opinion.

April 6, 1950—050-181.

COUNTY BOARD PUBLIC INSTRUCTION—BOND ISSUE—CONSULTANTS OR AGENTS—SCHOOL FUNDS—EXPENDITURE AUTHORIZED—DADE COUNTY

QUESTION: Is the Dade County Board of Public Instruction authorized to pay a syndicate composed of four bond dealers in Florida to assist in issuing bonds on behalf of special tax school district No. 1, Dade County, in the principal sum of \$12,500,000?

To: *Honorable Thomas D. Bailey, Superintendent, State Department of Education:*

.....

Your question is therefore answered in the affirmative.

June 6, 1950—050-269.

COUNTY SCHOOL SUPERINTENDENT—SCHOOL BOARD—DUTIES REGARDING EMPLOYEES

QUESTIONS: 1. What authority has a county school superintendent in employing, other than instructional, employees such as maintenance supervisor, general maintenance workers, warehouseman, garage mechanic, janitors, etc.?

2. Can the school board dismiss, other than instructional, employees such as maintenance men, janitors, mechanics, etc., regardless of the county school superintendent?

3. Can the county school superintendent dismiss, other than instructional, employees such as supervisor of maintenance, maintenance workers, skilled and unskilled, garage mechanics, janitors, etc., without concurrence of the school board?

4. If the school board desires that a maintenance department be reduced by 50% and order a reduction in such department of 50%, can the school board set a policy that those men shall be reduced who have been employed the shortest length of time, thus retaining the oldest men who claim seniority, regardless of the position of the superintendent and ignore any recommendation submitted by the superintendent?

5. Beginning July 1, 1950, can a board retain a maintenance supervisor or any maintenance worker, garage mechanic, etc., other than instructional personnel, if the superintendent fails to recommend that personnel for employment?

6. If a superintendent recommends a maintenance supervisor and persons other than instructional personnel, can the school board refuse to appoint those recommended by the superintendent?

To: *Honorable Thomas D. Bailey, State Superintendent of Education:*

.....

From the above cited statutes [230.33(7) and 230.23(7)] it is apparent that the legislature intended the superintendent to be an ad-

ministrative officer, subject to the direction of the school board. The power of appointment of personnel is vested in the school board. It is provided that the superintendent shall make recommendations of persons to fill various positions to the school board, but appointments can only be made by the board. It is, however, the duty of the trustees to consider the recommendations of the superintendent in making its nominations to the school board and not to reject such recommendations arbitrarily in the absence of good cause (See *Armistead et al. vs. State of Florida ex rel N. O. Smyth*, 41 So. 2d. 879).

This, I believe, answers your first question.

Question 2 is answered by Section 230.33 (7) (i) quoted above. It must be answered in the affirmative.

Question 3 is answered by Section 230.33 (7) (i) quoted above. The superintendent has the power to suspend employees during emergencies for a period of not more than 10 days and to recommend their dismissal at a hearing before the board. The superintendent does not have authority to dismiss employees without approval of the board.

Question 4 must be answered in the affirmative under the provisions of Section 230.23, Florida Statutes. Although it is contemplated that the superintendent shall make recommendations of persons to fill various positions for the benefit and guidance of the board, the law does not make it mandatory that the board must follow such recommendations.

Question 5 is answered in the affirmative under the provisions of Section 230.23, Florida Statutes.

Question 6 is answered in the affirmative under the provisions of Section 230.23, Florida Statutes.

July 21, 1950—050-354.

**BOARD OF PUBLIC INSTRUCTION—SCHOOL TRUSTEES—
POWERS—§230.43(4), FLORIDA STATUTES APPLICABLE**

QUESTIONS: 1. Does the Board of Trustees of Special Tax School District No. 1 have the right to be consulted when a school is to be established?

2. Is the concurrence of the Board of Trustees necessary when pupils are to be taken out of one school for the establishment of a new school center or the re-establishment of a discontinued center?

3. Do the specific powers and responsibilities of trustees concerning consolidation of schools extend to the establishment of new school centers and the "deconsolidation" of existing school centers?

4. Is the action of the County Board of Public Instruction re-establishing the discontinued school without notification to or concurrence by the Board of Trustees of Special Tax School District No. 1 legal and proper?

To: Honorable Thomas D. Bailey, Superintendent, Department of Education, Tallahassee, Florida:

.....
Your questions are accordingly answered as follows:

Question one is answered in the affirmative.
 Question two is answered in the affirmative.
 Question three is answered in the affirmative.
 Question four is answered in the negative.

July 27, 1950—050-367.

**COUNTY BOARD PUBLIC INSTRUCTION—TEACHERS—BIRTH OF
 BABY—RELEASE—REINSTATEMENT—NO OBLIGATION**

QUESTIONS: 1. Where a school teacher was released pursuant to the terms of a policy of the board, hereinafter stated, must that teacher be recommended by the principal and school trustees, as if an original appointment, before she may be reappointed to her former teaching position?

2. Where a school teacher was released as aforesaid, are the school authorities obligated by law to reinstate her whether there is a vacancy or not?

To: *Honorable Thomas D. Bailey, State Superintendent, Department of Education:*

.....

In the light of these observations the first question is answered in the affirmative and the second in the negative.

September 27, 1950—050-462—050-326.

**COUNTY SCHOOL BOARD—PURCHASE OF SCHOOL BUSES—RE-
 SALE TO CONTRACTORS—PROHIBITED UNDER
 ARTICLE XII, 13, CONSTITUTION**

QUESTIONS: "1. Is it permissible for a school board to purchase busses and then resell them to the contractors at the price the School Board paid for same, thereby effecting a saving to the School Board by reason of the lower contractual rates the Board would receive for the transportation of school children?

2. If the answer to question 1 should be in the affirmative the question arises as to Federal excise taxes levied upon the manufacturers of school bus bodies and chassis, from which tax school boards are exempt, but which individual purchasers must pay.

Could a county legally pay this tax and in turn collect same through a sale of the product to the contractor?

3. Again, if the answer to question 1 should be in the affirmative, the question arises as to the legality of the school board allowing an individual, otherwise desirable as a contractor-operator, to pay for the equipment over a two or three year period if cash is not available.

Would a sale of school property when payments extend beyond the current school year be valid, in view of an opinion of the Attorney General rendered September 25, 1947, number 047-326, quoted in part as follows: "There is no authority for a contract for bus transportation beyond the current school year and a transportation contract for any period beyond the current school year is void?"

To: *Honorable Thomas D. Bailey, Superintendent, State Department of Education:*

.....

Since question 1 must definitely be answered in the negative, your other questions do not require an answer.

October 30, 1950—050-506.

**COUNTY BOARD MEMBER—RESIDENCE DEFINED—VACANCY
—METHOD OF FILLING—§230.19, FLORIDA STATUTES**

QUESTIONS: "1. When a county board member removes his residence from a certain county board residence district from which he was elected can that district be regarded as properly represented by said board member remaining on the Board even though he retains his voting precinct in the district in which he formerly lived?

"2. Under the above circumstances should the board member be compensated after he has moved from his district?"

To: *Honorable Thomas D. Bailey, Superintendent, State Department of Education:*

.....

I do not think that the office in question has been automatically vacated by a temporary absence (or change of residence) if such be the case.

In summing up the above observations, I think your questions may best be answered as follows: First, if the board member still considers his permanent residence to be in his school district and other facts such as a continuation of his same voting precinct appear to substantiate this intention, the office in question would not be vacated unless declared so by the Governor or a court in proper judicial proceedings. Second, in my opinion the board member is entitled to compensation so long as he serves in the office until such time as the office is declared to be vacant by a court of competent jurisdiction. If the manner is to be determined by the courts, the action may be brought by a taxpayer's suit to enjoin the board member in question from holding the office or if the paying authority for the school board refuses to pay the board member his salary, the said board member could properly bring mandamus proceedings to compel the issuance of his check.

November 22, 1950—050-534.

**COUNTY SCHOOL BOARD—SELECTION OF SCHOOL SITES—
SPECIAL ELECTION NO AUTHORITY—§230.23, (11) (b), §235.19,
FLORIDA STATUTES APPLICABLE**

QUESTIONS: "A certain school site for a proposed elementary school has been recommended by the State Department of Education in accordance with Section 236.07 (6), Florida Statutes, 1949, based upon a survey. Due to a variance of opinion among certain patrons as to the location of the site a re-survey was made by a new survey

team which recommended the same site. These surveys have been adopted by the School Board.

"These same patrons now wish the school board to call a special election to determine by majority opinion the location of the site.

"1. Is there any authority in the law for the holding of such an election?

"2. Does the law give the school board authority for the selection and purchase of this site, based upon the recommendation of the surveys?"

To: *Honorable Thomas D. Bailey, Superintendent, State Department of Education:*

.....

Your first question is therefore answered in the negative. Your second question is answered in the affirmative.

November 28, 1950—050-538.

**SCHOOL PROPERTY—INSURANCE REQUIRED—SECTION
230.23 (1) (d), SECTION 235.07, F. S. APPLICABLE**

QUESTION: Is it mandatory for a school board to carry insurance upon a school building which is not in use?

To: *Honorable Thomas D. Bailey, Superintendent, State Department of Education:*

.....

In my opinion, it is the duty of the school board to carry sufficient insurance on all school property for its adequate protection regardless of whether the property is actually in use or not. If the building in question has any value at all it is incumbent upon the board to carry sufficient insurance to insure it against loss.

December 8, 1950—050-548.

**COUNTY SCHOOL BOARD—DONATION TO PRIVATE
SCHOOL—NO AUTHORITY—ARTICLE III,
§10, FLORIDA CONSTITUTION**

QUESTION: Would it be legal for a county school board to make a donation of a stipulated monthly sum to assist in the operation of a custodial school for handicapped, largely non-educable children located on private property and operated by agencies other than the county school board?

To: *Honorable Thomas D. Bailey, Superintendent, State Department of Education:*

.....

Your question is therefore answered in the negative.

PERSONNEL OF SCHOOL SYSTEM

July 19, 1949—049-331.

**TEACHERS' PENSIONS—FRANCES N. CLAYTON—HATTIE MAYO—
ENTITLED TO INCREASE—CHAPTER 25411, ACTS
1949—EFFECTIVE DATE**

QUESTIONS: 1. Does Chapter 25411 Acts of 1949, which amends Section 231.50, Florida Statutes, 1941, as amended by Chapter 22841,

Acts of 1945, by providing an increase in the monthly allowance to persons entitled to a pension under the old act, affect the pensions now being paid to Frances N. Clayton and Hattie Mayo?

2. If the first question is answered in the affirmative, in what way is the pension paid to Frances N. Clayton and Hattie Mayo altered?

3. If question one is answered in the affirmative are Mrs. Clayton and Mrs. Mayo entitled to pensions for the month of July 1949?

To: Honorable Thomas D. Bailey, Superintendent, Department of Education:

.....
It is my opinion therefore that both Mrs. Clayton and Mrs. Mayo are entitled to remain on the pension rolls but that their allowance is to be increased in accordance with the terms of the 1949 amendment. In other words they should receive \$75.00 per month unless this amount is greater than the last month's salary paid to them as a teacher. In that event they would receive the same amount as they were paid for their services for their last month as a teacher, provided, that the amount of their pension could not be less than \$60.00 per month.

Chapter 25411, Acts of 1949, provides that it is to take effect on July 31, 1949. The increase in allowance therefore, would not be effective until the August payment, 1949.

October 3, 1949—049-472.

PUBLIC SCHOOLS—INSTRUCTIONAL STAFF—CONTINUING
CONTRACTS—STATUS—UNDER CONTROL OF SCHOOL
AUTHORITIES

QUESTION: Where a continuing contract is issued to a member of the instructional staff of any public school in this state, but pursuant to Section 231.36, Florida Statutes, as amended, how may the contractual status of such person be changed without his consent?

To: Honorable Thomas D. Bailey, Superintendent of Public Instruction, Tallahassee, Florida:

.....
..... The amendment of said Section 231.36 in 1947 evidently had the effect of repealing Section 230.23(7)(i), Florida Statutes, in so far as they relate to the unfitness and unsuitability of instructional staff that may or should be ascertained within the trial period above mentioned. The school authorities would still have the same authority to suspend or dismiss him for cause as provided in Section 230.23(7)(i), Florida Statutes, except in so far as amended as above indicated. The right of removal would exist upon charges relating to immorality, misconduct in office, gross insubordination, drunkenness, conviction of crime involving moral turpitude and for the other grounds mentioned therein except as hereinabove mentioned as having been qualified by the 1947 and 1949 amendments. This appears to answer the above question.

June 8, 1950—050-279.

COUNTY SCHOOL BOARDS—TEACHER CONTRACTS—REQUIREMENTS—§231.36, FLORIDA STATUTES

QUESTIONS: 1. The fiscal year for Florida schools ends on June 30 of each year and teacher contracts terminate on that date. Under these circumstances, will all teaching personnel reappointed for their fourth successive year in a county for the school year 1950-51 be entitled to and must the county board on July 1, 1951, issue a continuing contract?

2. If the answer to the above question is in the affirmative, information is requested as to what the procedure would be for a county board to extend the period of service to four years in accordance with the part of Section 231.36, Florida Statutes, 1941, as amended by Chapter 25363, Acts of 1949, which reads as follows: "provided, that the period of service provided herein may be extended to four years when prescribed by the county board and agreed to in writing by the employee."

To: Honorable Thomas D. Bailey, Superintendent, State Department of Education:

.....

Your first question is therefore answered in the negative, since under the facts as presented in your question the teacher's employment would terminate on June 30, 1951, and she would not therefore be a "member of the instructional and administrative staff" as provided in the act unless of course she had at that time been reappointed for the school year 1951-52.

In reply to question 2, apparently it was the intent of the legislature to enable county boards at their discretion to require an additional probationary year of service before granting a teacher a continuing contract.

I think that if a county board wishes to require four years of service in its schools rather than three for any particular teacher, it must adopt a resolution to that effect setting forth its policy and directing that the teacher shall only be employed for the fourth successive year upon receipt of a written statement from the teacher in question agreeing to such condition for reemployment.

June 27, 1950—050-320—050-271.

COUNTY SCHOOL BOARD—TEACHERS AGE 65—RETIREMENT NOT REQUIRED—§231.36, FLORIDA STATUTES APPLICABLE

QUESTION: Does a County Board have the right to establish a policy not to reemploy in that county any teacher who has attained the age of sixty-five years?

To: Honorable Thomas D. Bailey, Superintendent, State Department of Education:

.....

Your question is therefore answered in the negative.

August 1, 1950—050-370.

APPOINTMENT—RE-APPOINTMENT—REVOCATION OF
APPOINTMENT

QUESTIONS: 1. Where a person is principal of a school whose term closes on June second of the year 1950 and said principal was notified by a letter from the county superintendent dated April 17, 1950 that the county superintendent had recommended to the board of trustees that said principal not be re-appointed and where said board of trustees concurred in the recommendation of the county superintendent by a vote of 2 to 1 and where the county board of public instruction at a regular meeting on April 5, 1950 concurred in the action of the county superintendent and trustees as to non-reappointment of said principal, is such notice of non-reappointment under the above circumstances sufficient?

2. Where a county board of public instruction has concurred in the recommendation of the county superintendent and the board of trustees in the non-reappointment of a principal and where another person has been appointed principal of the school in question may said county board rescind its action of appointment of said principal and re-appoint the person who served as principal during the school year just elapsed and who had previously been recommended for non-reappointment by the county superintendent, which recommendation as previously stated was concurred in by the board of trustees and the board of public instruction?

To: Honorable Thomas D. Bailey, Superintendent, State Department of Education:

.....

Section 231.35 (2) makes it the duty of the county board through the county superintendent to notify in writing each person subject to annual reappointment whether or not he has been reappointed for the ensuing year. It will be noted that the statute is silent as to any time element for such notification. I am of the opinion that notice was given within a reasonable time before the school term ended and therefore your first question is properly answered in the affirmative.

As to your second question, I believe and it is my opinion that the county board can rescind its action in concurring in the superintendent's recommendation and trustees' nomination and after such rescission may for good cause reject such nomination; provided, of course, such rescission is reasonably and timely made. There is nothing to the contrary in the school statutes and administrative boards generally have the power to rescind prior action provided substantial contract rights are not impaired. Whether or not any contractual rights are involved in these cases, I do not attempt to answer, but assuming that no contract has been entered into between the board and the nominee, certainly no substantial rights would be involved, since the school term has not yet begun. It is my opinion, therefore, on the facts submitted and on the assumption that no teacher contract has been entered into, that this question should be answered in the affirmative.

.....

CHILD WELFARE; SCHOOLS

March 28, 1949—049-135.

**COUNTY BOARD—CAFETERIAS—PTA EMPLOYEES ENTITLED
BENEFITS OF WORKMEN'S COMPENSATION—TEACHER'S
CAR—DAMAGE—COUNTY BOARD LIABLE**

QUESTIONS: 1. What is the County Board of Public Instruction's responsibility under the Workmen's Compensation Law in an accident to an employee who is hired by the local school principal and paid partially from county tax monies?

2. What is the Board's responsibility where an employee has an accident when he is hired by the local school principal and paid entirely from lunchroom or activity funds?

3. Is it legal for the County Board of Public Instruction to help bear the expense of repairing a teacher's car which was driven by a student to carry a sick child home from school; the student having an accident on the return trip to school?

To: Honorable Thomas D. Bailey, Superintendent of Public Instruction, Tallahassee, Florida:

Assuming that the employment by the local school principal has been authorized or ratified by the County Board, I concur in the opinion 043-17 by my predecessor. . . .

. . . . questions 1 and 2 are answered in the affirmative.

. . . . under the circumstances stated in your question, I am of the opinion that the County Board is liable for the damage done to the teacher's car under an implied contract, in performance of a responsibility of the Board.

TRANSPORTATION OF SCHOOL CHILDREN

October 12, 1949—049-487.

**SCHOOL TRUSTEE—EMPLOYMENT AS SCHOOL BUS DRIVER
PROHIBITED**

QUESTION: May a school trustee also be employed as a school bus driver?

To: Mr. J. F. Scussel, Hilliard, Florida:

. . . .

Your question is therefore answered in the negative.

February 1, 1950—050-70.

**SCHOOL BUS WARNING SIGNS—TRAFFIC LAW FOR SCHOOL
BUSES—CITY ENFORCEMENT—§234.04, F. S. '41**

QUESTION: Does the law requiring traffic to stop for loading and unloading of children from a school bus apply within incorporated cities, regardless of local police regulations?

To: Honorable Thomas D. Bailey, Superintendent, State Department of Education:

.....

It is my opinion the provisions of this act apply to any public highway or street. The purpose of the act is to protect school children transported on any public way.

April 25, 1950—050-216.

COUNTY SCHOOL BOARD—PUPILS TRANSPORTATION—LIABILITY INSURANCE PROTECTION—§234.03, FLORIDA STATUTES

QUESTIONS: 1. Are the above State Board Regulations as written in conformance with the intent and purpose of the law?

2. What would be the position of a county board if it should be determined that the insurance policy carried by the county for the protection of pupils did not apply to children while crossing the road at the school bus stop?

3. Does the attached copy of the insurance policy No. A L 30350, St. Paul-Mercury Indemnity Company carried on bus No. 1 by the Board of Public Instruction of St. Lucie County meet the minimum provisions of law and regulations of the state board?

4. Noting that the policy limits the load of the bus to sixty pupils, would the policy be effective should the bus be involved in an accident while carrying more than 60 pupils?

To: Honorable Thomas D. Bailey, Superintendent, State Department of Education:

.....

With regard to your first question, in my opinion the regulations adopted by the State Board of Education as set forth in your letter, are consistent and in conformance with the intent and purpose of the above mentioned statute.

In the second question, I assume that your inquiry has to do with whether or not the county school board would be liable either as individuals or as a county board, for damages under the circumstances set forth. In my opinion, there would be no recovery in tort against the Board (see *Bragg v. Board of Public Instruction, Duval County, Fla.*, 36 So. 2d. 222).

.....

With regard to question 3, I have examined carefully the insurance policy attached to your letter. In my opinion, it does not clearly provide coverage for persons who must of necessity cross a public thoroughfare while engaged in alighting from or entering a school bus.

In answer to question 4, it is my opinion that the provision included in the policy defining the bus as "a school bus, Thomas body, carrying not over 60" may well be more than a mere description of the bus. It may just as easily be considered a limitation on the number of passengers if the policy is to be in effect. For this reason, I think that this provision is questionable and should be clarified.

STATE PLAN FOR PUBLIC EDUCATION

November 1, 1949—049-522.

FLORIDA COUNCIL FOR BLIND—SCHOOLS NOT ALLOWED TO
EXTEND INSTRUCTION TO NEGRO BLIND PERSONS—
\$228.09 F. S. '41

QUESTION: May the Florida Council for the Blind extend diagnostic, prevocational and adjustment services or instruction to negro blind persons at its Adult Training Center located at Holly Hill, Florida, in conjunction with its program of daytime classes offered to white blind persons?

To: Mr. Harry E. Simmons, Executive Director, Tampa, Florida:

.....

In view of the above, your question must be answered in the negative.

It should be noted, however, that this opinion does not preclude the possibility of offering the instruction or services contemplated to negro students in buildings for negroes such as facilities of the Bethune-Cookman College.

November 18, 1949—049-552.

FLORIDA COUNCIL FOR BLIND—NEGRO STUDENTS—BETHUNE-
COOKMAN COLLEGE—WHITE TEACHERS NOT PROHIBITED

QUESTION: Is the Florida Council for the Blind authorized to furnish a prevocational and adjustment class for negroes of the same six weeks duration as white classes now being conducted at the Holly Hill Center, utilizing such trained personnel as may be available, white or colored, that would express their willingness to attempt such a project, said classes to be held in buildings furnished by the Bethune-Cookman College or other buildings not used for white school purposes?

To: Mr. Harry E. Simmons, Executive Director, Florida Council for the Blind:

.....

Your question is therefore answered in the affirmative.

THE SCHOOL PLANT

July 22, 1949—049-338—049-118.

ELECTIONS—TRUSTEES—REGISTRATION BOOKS—CLOSING
TIME—CHAPTER 24214, ACTS OF 1947 APPLICABLE
TO PINELLAS COUNTY

QUESTION: Under the provisions of Chapter 24214, Laws of Florida, Acts of 1947, when should the registration books of Pinellas County close prior to a school trustee election?

To: Honorable Warren A. Wright, Supervisor of Registration, Pinellas County, Clearwater, Florida:

.....

In view of the foregoing, in my opinion the above question properly is answered as follows:

Under the provisions of Chapter 24214, Laws of Florida, Acts of 1947, the registration books of Pinellas County should close thirty days before a school trustee election is held. Because of the possibility that another election subsequent to said school trustee election may be held under circumstances comparable to those found in Opinion No. 049-118, it is remarked that the answer here given should be read in the light of the conclusions reached in such former opinion.

September 2, 1949—049-419.

SCHOOL BUILDING—CONSTRUCTION NOT COMPLETED FOR
SCHOOL TERM—HOUSE BILL 1224, 1949—EFFECTIVE—
COLUMBIA COUNTY

QUESTION: Does House Bill No. 1224, an act of the 1949 Session of the Florida Legislature, which provides for the construction of a school building in Columbia County and directing that it shall be ready for use for the 1949-1950 school term, remain in effect even though the building has not been constructed and cannot be completed prior to the beginning of said school term?

To: *Honorable Albert Rumph, County Superintendent of Public Instruction, Columbia County, Lake City, Florida:*

.

In my opinion the act in question is of continuing force and effect and will remain so even though it is impossible to have the building ready for use before the first day of the ensuing school year.

Your question must, therefore, be answered in the affirmative.

October 5, 1949—049-475.

COUNTY BOARD PUBLIC INSTRUCTION—COUNTY SCHOOL
FUNDS—AUDITORIUM—SWIMMING POOL—NEGROES'
USE—MUNICIPAL PROPERTY—NO AUTHORITY

QUESTIONS: 1. May the county board of public instruction, jointly with the board of county commissioners and a municipality, construct an auditorium on property belonging to said municipality for use by negroes where the contract under which the said auditorium is constructed provides that the said auditorium shall be available for school purposes and use?

2. May the county board of public instruction, jointly with municipality, construct a swimming pool on municipal property where the contract under which the said swimming pool constructed provides that the said swimming pool shall be available for school purposes and use?

To: *Honorable Thomas D. Bailey, Superintendent of Public Instruction:*

.

there appears no valid reason why a school might not include swimming in its training for physical development. Although auditoriums were not considered necessary as a part of the school plant for our earlier schools it has now become almost a necessity and no large school is considered properly equipped without one.

As the county public school fund must be used solely for the support and maintenance of the public free schools (Section 9, Article

XII, State Constitution) and may not be diverted to any other school purposes (Section 13, Article XII, State Constitution) it seems clear that the county board of public instruction cannot donate any of such funds for the construction of auditoriums and swimming pools by the county or a municipality, unless there be some permanent arrangement for the use of such auditoriums and swimming pools for educational purposes. Such arrangement would have to be irrevocable by the constructing authority. The use of such auditoriums and swimming pools by the schools would have to be something in addition to the general right of the public to use such facilities. The school authorities could not purchase rights and privileges that already belong to the school personnel and pupils.

Under the school code the county board of public instruction is given authority "to rent buildings when necessary" (Section 230.23 (11) (b), Florida Statutes). Under this authority the said school board might enter into some lease arrangement for the use of the buildings and facilities constructed for which a definite reasonable consideration might be paid.

March 6, 1950—050-112.

COUNTY BOARD OF PUBLIC INSTRUCTION—SCHOOL TRUSTEES—TRANSFER OF PROPERTY—\$235.04, F. S. APPLICABLE

QUESTIONS: "On March 26, 1926 the trustees of a school district received title to three lots in a block of a city subdivision. On September 24, 1948, the Board of Public Instruction of the same county conveyed the property to a certain individual.

"Does the law make provision for the Board of Public Instruction to convey property, the title to which is taken in district trustees?

"Would the solution be for the present trustees School District #1 (county-wide) to convey by quit-claim deed this property to the School Board thus curing the defect of the missing link between trustees and School Board?"

To: *Hon. Thomas D. Bailey, Superintendent of Public Instruction:*

..... Your first question is therefore answered in the negative.

In my opinion a deed should be given to the individual in question by the board of trustees upon proper resolution of approval by the county school board. See Section 235.04, Florida Statutes.

This is based on the assumption that the school board has already given a deed. Otherwise, I think the safest course to follow would be to obtain a deed executed by both the board of trustees and the county school board.

FINANCE AND TAXATION; SCHOOLS

March 10, 1949—049-103.

COLLIER COUNTY SCHOOLS—PROPOSED BOND ISSUE—COUNTY BOARD MAY INITIATE PETITION

Question: Is it mandatory in a county of 6000 population to initiate a proposed bond issue for schools by petition under Section 236.36,

Florida Statutes, 1941; or may a proposal by the county board be the initiating point for the issuance of bonds for the district?

To: Honorable Harold S. Smith, Attorney, Board of Public Instruction, Collier County, Everglades, Florida:

In an opinion of April 5, 1946 reported in the Biennial Report of the Attorney General, 1945-1946, my predecessor held that the county board could initiate the petition for the issuance of bonds for the district. I concur in that opinion.

March 22, 1949—049-128.

SURPLUS FUNDS—EXCLUSIVE USE—PUBLIC SCHOOLS— SPECIAL TAX DISTRICT

QUESTION: If a special tax school district has a surplus over and above the requirements necessary to retire principal and interest on old district bonds would it be possible to use this surplus toward the retirement of a new bond issue for county wide "Special Tax School District Number One" consolidated by the 1947 legislature act, Chapter 23726, Section 230.34, Florida Statutes, 1941-1947 Cumulative Supplement.

To: Honorable Thomas D. Bailey, State Superintendent of Public Instruction, Tallahassee, Florida:

..... your question is answered in the negative.

March 29, 1949—049-131.

SCHOOL BOND ELECTIONS—FREEHOLDERS—HOMESTEAD EX- EMPTIONS—SCHOOL TAX

QUESTIONS: 1. Are home owners who receive homestead exemption under the provisions of Art. X, §7, Fla. Const., and who otherwise are qualified electors, eligible to vote in a school bond election?

2. Are homes exempt up to \$5,000 under the aforesaid constitutional provision subject to a levy of tax for school bond purposes?

To: Honorable Velton Walters, Superintendent of Public Instruction, Glades County, Moore Haven, Florida:

1. A freeholder whose only taxable property in a school district is a homestead of less than \$5,000 in value is eligible to vote in special tax school district bond election. *Lersch vs. Board of Public Instruction for Orange County*, 164 So. 281.

2. Except with respect to those special tax school district bond obligations incurred prior to the adoption of Art. X, §7, Fla. Const., at the general election in 1934, homes in the district up to \$5,000 in value, as to which exemptions have been properly claimed under the aforesaid constitutional provision, are not subject to levy of tax for school purposes. See *Henderson v. State*, 188 So. 351.

May 11, 1949—049-206.

RESOLUTION—SCHOOL BOND ISSUE—ORANGE COUNTY

STATEMENT: Proposed Bond Issue of Special Tax School District Number 1 of Orange County, \$6,000,000; Conditions Under Which Bonds Are to Be Callable.

To: *Honorable Thomas D. Bailey, State Superintendent of Public Instruction:*

I have examined the proposed resolution and in my opinion it is not acceptable in that it appears to provide that any of the bonds bearing interest at 2.99 per cent or less shall not be callable prior to maturities. I am quite sure that the State Board of Education would never prohibit the privilege of calling a bond if the political subdivision issuing the bonds and the purchasers are agreeable to redemption prior to maturity. Another objection is that the last paragraph of the resolution is not clear.

..... I have prepared another form of resolution which complies with the statutes involved, and enclose copy.

.....
May 19, 1949—049-227.

DADE COUNTY—SCHOOL FUNDS—TEMPORARY LOAN PERMITTED—APPROVAL—STATE BOARD OF EDUCATION

QUESTION: "Because of matters beyond the control of the Board of Public Instruction of Dade County, Florida, funds belonging to Special Tax School No. 2, Dade County, Bond Construction Fund lie idle without drawing interest and cannot be utilized for the purposes for which said bonds were issued within a period of more than one year. May said Board lawfully invest said funds in an obligation of School District No. 1, under Paragraph (c) of Subsection (3) of Section 236.49 Florida Statutes 1941 to mature within one year from the date of the investment upon the approval of the State Board of Education of Florida as provided in Sections 237.26 and 237.27 Florida Statutes 1941 without obtaining approval of the County Budget Commission, the State Superintendent and The Comptroller of Florida?"
To: *Honorable Thomas D. Bailey, Superintendent of Public Instruction:*

.....
The question is therefore answered in the affirmative.

June 27, 1949—049-278.

COUNTY BOARD OF PUBLIC INSTRUCTION—MINIMUM FOUNDATION FUNDS—TO PAY DISTRICT BONDS NOT ALLOWED—BROWARD COUNTY

QUESTION: "Can the Board of Public Instruction of Broward County, Florida, in its budget to be adopted for the year 1949-1950, allocate to payment of debt service requirements on obligations of former Special Tax School Districts Nos. 4 and 5 of Broward County, Florida (which existed prior to consolidation), any portion of the capital outlay funds received from the state under the minimum foundation program as provided in Section 236.07, subsection 6 of Florida Statutes Annotated (amended by Chapter 23726, Laws of 1947)?"

To: *Colonel Julian Ross, Attorney for Broward County School Board, Fort Lauderdale, Florida:*

.....
Since from the facts related in your letter it does not appear that all of these needs have been met, your question must be answered in the negative.

July 26, 1949—049-337.

**STATE SCHOOL BOARD—REGULATIONS—TEACHER CONTRACTS
—NOT AUTHORIZED TO PRESCRIBE—MINIMUM FOUNDATION PROGRAM FUND**

QUESTION: Is the State Board of Education authorized to prescribe a regulation for county teacher contracts in counties participating in minimum foundation program fund, which would include the following provision? "Provided, however, that for the school year 1949-1950 said contracts may provide that in the event the State fails to meet its obligations to supply funds as appropriated by the 1949 regular session of the Legislature, the County cannot be held liable for any resulting deficiency between the salary contracted for and school revenues from local sources which have been provided in lawful anticipation of such state appropriations being paid."

To: Honorable Thomas D. Bailey, Superintendent, Department of Education:

.....

The adoption of the proposed regulation would be a definite departure from this policy.

The question must therefore be answered in the negative.

September 7, 1949—049-423.

**SPECIAL TAX SCHOOL DISTRICT—MILLAGE LEVY—TRUSTEES—
NOT AUTHORIZED CHANGE—HILLSBOROUGH COUNTY**

QUESTION: Are the Trustees of Special Tax School District No. 1, Hillsborough County, authorized to certify to be levied a millage rate of less than 9 mills for district school purposes when the millage levy approved by the qualified electors in the district for this budget year is 9 mills?

To: Honorable Thomas D. Bailey, Superintendent, Department of Education:

.....

..... your question is therefore answered in the negative.

September 23, 1949—049-452.

**BIENNIAL SCHOOL DISTRICT ELECTION—REGULAR POLLING
PLACES OPENED—BALLOT BOXES—REMOVAL OF
BALLOTS ALLOWED**

QUESTIONS: 1. In holding a regular biennial school district election, is it necessary that the polling place in each election district in the school district be open?

2. On June 3, 1949, a school district bond election was held, and now the ballot boxes contain ballots voted and not voted in such election. May the school board remove said ballots from such boxes so the boxes will be available for use in the regular biennial school district election?

To: Honorable Thomas G. Hall, Attorney, Board of Public Instruction, Nassau County, Fernandina, Florida:

1. . . . it would seem that all regular polling places in the district should be open for the election.

2. There appears to be no reason why the board may not empty the ballot boxes. . . . As a matter of caution, it is suggested that when voted ballots are removed from said boxes that the county board do so in the presence of three or more witnesses, and that such voted ballots be placed in envelopes and sealed, the witnesses signing their names across the sealed flap; and that such envelopes be retained in a safe place by the secretary of the board.

October 5, 1949—049-474.

**ELECTION—BIENNIAL SCHOOL DISTRICT—REGISTRATIONS—
QUALIFIED VOTERS—§236.32 (2) (d)—FLAGLER COUNTY**

QUESTION: In view of the provisions of Chapter 25018, Laws of Florida, Acts of 1949, what registrations control in Flagler County with respect to the regular 1949 biennial school district election to be held in said county?

To: Honorable H. T. Cook, Attorney, Board of Public Instruction, Flagler County, Bunnell, Florida:

Qualified electors residing within this special tax school district who pay a tax on real or personal property within the district and who were registered in the primary registration books of Flagler County on and prior to the effective date of Chapter 25018, or who have registered or shall register in the general election registration books of said county prior to their closing on the thirtieth day preceding November 8, 1949, shall be entitled to vote in this election.

November 2, 1949—049-524.

ELECTIONS—BIENNIAL SCHOOL DISTRICT—ELECTORS—QUALIFICATION REQUIREMENTS

QUESTIONS: 1. Does Section 236.32 (1) (e) limit qualified electors to those who have paid a tax on personal or real property for the year 1948 (the year next preceding this election) or, does it include qualified electors who did not pay such a tax for 1948, but who will have paid such tax for the year 1949, or who have become freeholders in 1949 and therefore, liable for a tax on real estate?

2. Is it proper to require voters at such election to sign an affidavit to the effect that they are qualified electors residing in said school district, that their voting registration is in said district that they pay a tax on real or personal property, and that they have paid such tax for the year next preceding such election?

To: Honorable Julian L. Williams, Acting Attorney, Board of Public Instruction, Ft. Lauderdale, Florida:

A comprehensive discussion of the qualifications of electors in special school district elections, is found in an opinion rendered by a previous Attorney General on October 3, 1939 (Number 0-594). I am enclosing a copy of this opinion for your information together with copies of Attorney General opinions 047-345, 047-282 and 045-247.

With regard to your first question, I concur in the statement included in the 1939 opinion to the effect that taxes must have been paid "for the year next preceding any such election."

Question 2 is answered in part by the statement in the 1939 opinion which provides "If a person pays his taxes on the day of the election, he may be qualified to vote provided his name is placed on the certified list of qualified electors by the supervisor of registration."

In my opinion such payment of taxes may be evidenced by an affidavit of the elector at the time of voting if in the discretion of the supervisor of registration it is necessary to require such affidavits. Question 2 is therefore, answered in the affirmative subject to the above remarks.

January 24, 1950—050-34.

DISTRICT BOND ISSUE—METHOD OF INITIATING—CITIES
WITHIN DISTRICT—POWERS OF SCHOOL BOARD—
§230.34-36, F. S. '41

QUESTION: What method of initiating a district school bond issue should be followed by Dade county in view of the provisions of Sections 230.34 and 236.36, Florida Statutes, and in view of the fact that there are three cities in Dade county of more than 25,000 population?

To: Honorable Thomas D. Bailey, Superintendent, State Department of Education:

.....

I think, therefore, that the portion of Section 236.36, Florida Statutes, is applicable which provides, "provided, that in school districts located wholly or partially in cities of twenty-five thousand population, or more, according to the last federal census, the said petition may be dispensed with and the proposition of issuing bonds for the purposes as herein outlined may be initiated by the county board of the said county or by the trustees of said school district or by both bodies; and, provided further, that nothing contained in this section shall repeal any of the provisions of Chapter 103."

In my opinion, this provision indicates the proper method of initiating a district school bond issue in Dade county.

June 7, 1950—050-278.

ELECTIONS—SPECIAL TAX SCHOOL DISTRICT—VOTING MACHINES—INSTRUCTION TO VOTERS—§2 36.32 (g) (4),
FLORIDA STATUTES—PINELLAS COUNTY

QUESTION: In conducting the special tax school district election in Pinellas county on November 8, 1949, voting machines were used. The machines were set up for the voter to indicate an "X" in the space provided to indicate approval of the proposed millage levy. In addition to this, a space was provided with the following directions: "If you favor a different millage, raise slide No. 1 and write millage desired." Does this procedure comply with the law?

To: Honorable Thomas D. Bailey, Superintendent, Department of Education:

.....

..... Your question is therefore answered in the affirmative.

September 19, 1950—050-447—050-363.

**COUNTY SCHOOL BOARDS—SCHOOL CHILDREN—HOUSING
PROJECTS ON MILITARY BASES—LEASEHOLD INTER-
ESTS—TAXABLE AS—TANGIBLE PERSONAL
PROPERTY**

QUESTION: What is the responsibility of a school board in this state to provide public educational facilities for children residing in housing projects established on military reservations in this state, pursuant to the United States Code (Title 10, Section 1270 and Title 12, Sections 1748a, et seq.) by individuals or corporations under lease from the Federal government?

To: Honorable Thomas D. Bailey, Superintendent, State Department of Education:

.....

..... it is my opinion that persons living in housing projects established on military bases in this state cannot be considered citizens for one purpose and non-citizens for another, and therefore if the county can legally levy the taxes as indicated by the Comptroller, it is the responsibility of the county school board to provide educational facilities for these children in a similar manner and way as provided for any other citizen of the said county.

FINANCIAL ACCOUNTS AND EXPENDITURES

May 5, 1949—049-195.

**SCHOOL BOARDS—BIDS—ADDITIONAL PURCHASES OVER \$300.00
—NEW BIDS REQUIRED**

QUESTION: Does a County Board of Public Instruction have the right to negotiate with the low bidder for additional purchases amounting to more than \$300.00 without requesting new bids.

To: Honorable Thomas D. Bailey, Superintendent, Department of Education:

.....

The question must therefore be answered in the negative.

May 25, 1949—049-233.

**STATE BOARD OF EDUCATION—SPECIAL MILLAGE—SCHOOL
BUILDINGS—CONSTITUTIONAL PROVISIONS**

QUESTION: Is it possible for tax payers to vote more than four mills for school building purposes without floating a bond issue?

To: Mr. Velton Walters, Secretary and Superintendent, Board of Public Instruction, Moore Haven, Florida:

.....

..... the answer is therefore in the negative.

October 26, 1949—049-512.

**COUNTY BOARD PUBLIC INSTRUCTION—SCHOOL BUDGET—
CURRENT SCHOOL PROGRAM OBLIGATIONS—PRIORITY
OVER PREVIOUS YEAR**

QUESTION: Should a county board of public instruction give priority of payment to the operation of the current school program instead of meeting obligations of the previous year?

To: *Honorable Thomas D. Bailey, Superintendent of Public Instruction, CAPITOL:*

..... the question submitted is answered in the affirmative.

May 31, 1950—050-268.

SCHOOL TRUSTEES—NO AUTHORITY TO PREPARE DISTRICT BUDGET

QUESTION: Is the authority to make and prepare district budget vested in the school trustees?

To: *Honorable P. B. Revels, County Attorney, Putnam County, Palatka, Florida:*

.....

It is my opinion that the school trustees have no statutory authority to make and prepare its budget.

Your question is therefore answered in the negative.

August 28, 1950—050-423.

STATE DEPARTMENT OF EDUCATION COUNTY SCHOOL BOARD CHAIRMAN—BONDS RESPONSIBILITY—§237.31 (6), FLORIDA STATUTES

QUESTION: Would it be permissible for the State Department of Education to be responsible for an additional bond (only) of county school board chairmen and to keep these additional bonds on file in the State Department of Education?

To: *Honorable Thomas D. Bailey, Superintendent, State Department of Education:*

.....

Since this statute requires bonds for school officials to be filed with the Secretary of State, your question must be answered in the negative. However, while it is not strictly required by law that a copy of the bond be furnished you, I think you could appropriately request that a copy be furnished you either by the official bonded or by the surety.

RETIREMENT SYSTEM FOR TEACHERS

April 20, 1949—049-172.

TEACHERS'—RETIREMENT—MINIMUM ALLOWANCES—SECTION 238.07(7)—APPLICABLE

QUESTION: In view of Section 238.07 (11) (c), Florida Statutes, 1941, may a teacher once retired on disability who returns to service after age 50 have his retirement allowance computed on his total years of service credit under the provisions of Section 238.07 (7) when he applies for service retirement or shall this section be applied only to the additional service rendered after his return to teaching service?

To: *Honorable K. D. Farris, Auditor, Teachers' Retirement System:*

Sections 238.07 (7) and 238.07 (11) (c), referred to in the question, are a part of Chapter 23864, Laws of 1947, which amended the Teachers' Retirement Act.

Section 238.07 (7) is new; Section 238.07 (c) is an amendment of former Section 238.07 (9) (c).

Superficially, there may appear to be a conflict between the two subsections, but actually there is none. They are to be so read as to mean that if upon computation under Section 238.07 (11) (c), the amount is less than that provided by Section 238.07 (7), the latter will take effect; and the allowance, in that event, computed in accordance with Section 238.07 (7).

It was the intention of the Legislature to establish in Section 238.07 (7) a minimum retirement allowance which would supersede any other formula set up in the act for computation of teachers' retirement allowances if the latter were less than the minimum set up in that section.

May 20, 1949—049-223.

**TEACHERS—MILITARY SERVICE—RETIREMENT—MEMBERSHIP
SERVICE CREDIT—TWO-YEAR LIMIT—DISCHARGE
DATE—DECEMBER 31, 1946**

QUESTION: Has the date of the close of the war, as referred to in Section 238.05 (3) (b), Statutes of 1941, as amended, been established? If so, please give the date that should be used to comply with this section of the law.

To: *Mr. K. D. Farris, Auditor, Teachers' Retirement System:*

.....

..... It is my opinion that the date of the President's proclamation, December 31, 1946, or the date when the teacher was eligible for discharge from military service, whichever is later, would be the date for the beginning of the two-year limitation mentioned in the statute.

October 31, 1949—049-530.

**TEACHERS' RETIREMENT SYSTEM—OUT-OF-STATE PRIOR
SERVICE CREDIT—"TAX SUPPORTED INSTITUTIONS"
—§238.01(4)**

QUESTION: Is a member of the teaching or professional staff of any of the State institutions of higher learning entitled to prior service credit under Section 238.06(4), where such out-of-state service is claimed for teaching in institutions privately operated but tax supported?

To: *Board of Control:*

.....

Section 238.01(4) authorizes the trustees of the retirement system to determine such questions as this in case of doubt, and each application for such out-of-state prior service credit earned at institutions of higher learning other than exclusively tax supported institutions should be referred to the trustees of the teachers' retirement system until such time as the trustees, by appropriate rule, define "tax supported institutions," or the act is made clear by amendment.

January 3, 1950—050-16.

**DISQUALIFICATION—CONVICTION FOR FELONY—GROUNDS FOR
DENYING PENSION—§238.02-05-07, F.S. '41**

QUESTION: Are members of the state teachers' retirement system, who have been convicted of felonies and sentenced to the state prison, entitled to retirement pay, when otherwise qualified, after discharge or parolement from prison?

To: K. D. Farris, Auditor, Teachers' Retirement System:

.....

In the light of the above observations and authorities we feel that the above question should be answered in the affirmative.

February 22, 1950—050-91.

**PRIOR SERVICE CREDITS—CANADIAN TEACHING SERVICE—
EXCEPTIONS—§238.06, F. S. '41**

QUESTIONS: (1) Is teaching service in Canada creditable as prior service under the provisions of Section 238.06, Florida Statutes of 1941, as amended?

(2) May the Trustees of the Teachers' Retirement System authorize prior service credit for teaching service in Canada?

To: Hon. Thomas D. Bailey, Superintendent of Public Instruction:

You refer to an opinion of my predecessor, No. 044-136, of April 26, 1944, holding that teaching service in a foreign country is not creditable as prior service under Section 238.06. Canada is a foreign country.

..... I concur in the opinion of my predecessor.

.....

Referring to your second question, I find no authority in the Teachers' Retirement System for the Trustees to make an exception to the rule or allow prior service credit for teaching in Canada.

May 3, 1950—050-228.

TEACHERS—SERVICES IN ARMED FORCES—ENTITLED RETIREMENT CREDIT—§238.05, (3) (c), FLORIDA STATUTES

QUESTION: "In view of the provisions of Section 238.05 (3) (c), Chapter 25398, Acts of 1949, must a person have ceased to teach by reason of service in the armed services of the nation in order to receive retirement credit for the period of his military duty in World War I?"

To: Mr. K. D. Farris, Auditor, Teachers' Retirement System:

.....

..... The question is accordingly answered in the negative.

June 6, 1950—050-271.

COUNTY SCHOOL BOARDS—TEACHERS—NO COMPULSORY RETIREMENT AT AGE 65—§238.07, FLORIDA STATUTES

QUESTION: "In view of the State law making teacher retirement compulsory at age 70 would a County School Board have legal author-

ity to establish a policy that all teachers, principals and supervisors of instruction be retired at age 65?"

To: Honorable Thomas D. Bailey, Superintendent, State Department of Education:

.....

In my opinion, a county school board is not authorized to adopt a policy of requiring teachers to retire at age 65, since such policy would be in conflict with the statute. Your question is therefore answered in the negative.

December 22, 1950—050-578.

**TEACHERS' RETIREMENT—EMPLOYMENT BY COUNTY
GOVERNMENT—SERVICE CREDIT—§238.06 (6),
FLORIDA STATUTES, APPLICABLE**

QUESTIONS: Under the provisions of Section 238.06 (6), Florida Statutes, 1949, may service credit be allowed a member of the Teachers' Retirement System toward retirement for employment by the county government in the State of Florida provided he was a member on July 1, 1949?

If your answer is in the affirmative, may the salary earned during such employment be used to determine a member's average final compensation as defined in Section 238.01 (15)?

To: Hon. K. D. Farris, Executive Secretary, Teachers' Retirement System:

.....

..... your first question must be answered in the negative and no answer is necessary for your second question.

**GENERAL PROVISIONS FOR INSTITUTIONS OF HIGHER
LEARNING**

September 15, 1949—049-438.

**INSTITUTIONS OF HIGHER LEARNING—ADMISSION WITHOUT
PAY—RESIDENCE—CITIZENSHIP—REQUIREMENTS—
NO DEFINITE RULE**

QUESTION: What are the citizenship or residence requirements for admission to the institutions of higher learning without payment of tuition?

To: Board of Control, Florida State University, Tallahassee, Florida:

..... In order to qualify as a resident student, these regulations require the applicant for admission to have been a resident of the state for twelve months if he is an adult; if a minor, he is considered a resident only if his parents or guardian have been residents of the state for twelve months. Section 239.02 authorizes a tuition charge against nonresident students. The same section provides that the institution shall be open to applicants "who are citizens of this state," and in connection with the affidavit required for admission, refers to this same group as "bona fide citizens and residents."

My predecessor construed the terms "citizens of this state" and "bona fide citizens and residents" of the state, in that statute, as meaning simply actual residents of the State of Florida. In other words, it was construed to mean that an adult student applicant who was an actual resident, or the minor son of parents who were actually residents of the state, regardless of the length of time they may have resided here, were entitled to admission without payment of tuition. I agree with that interpretation. The statute does not fix an absolute or precise rule for determination of who may be a bona fide resident. Each case must be determined on its own facts. The question always is,—does the applicant actually and in good faith, have his home in this state with the intention of remaining here?

The rules which you submitted require twelve months' residence. This may serve very well for a practical, temporary, and preliminary classification; but it is subject to the right of a bona fide resident who can supply satisfactory evidence that he resides in this state and has the intention to continue his home in this state indefinitely, to demand admission without obligation to pay tuition.

September 16, 1949—049-443.

INSTITUTIONS OF HIGHER LEARNING—SCHOLARSHIP AID—
HOUSE AND SENATE—PREPARATION OF TEACHERS—
REQUIREMENTS

QUESTIONS: 1. Does an institution of higher learning having students who are participating in the State scholarship aid program (House, Senatorial, or Preparation of teachers) have authority under law to set standards that such scholarship holders must meet in order to continue receiving scholarship aid?

2. If such institutions of higher learning have such authority, is it permissive or mandatory?

3. Does the State Board of Education have authority under the law to set standards which all holders of state aid scholarships must maintain in order to continue to receive the aid regardless of the standards set by the institution of higher learning which the student is attending?

4. What agency, board or officer has authority to delete the name of a holder of said scholarship from the eligible list if the holder is not meeting the standards for continuance of scholarship aid?

To: *Honorable Thomas D. Bailey, State Superintendent of Public Instruction:*

.....

It is my opinion that the above questions should be answered in their numbered order as follows:

1. The institution cannot require such holders of scholarships to maintain higher averages and take greater work loads than that required of the average student in the college of education.

2. Such standards as may be required by the institution as indicated in answer to question one, are mandatory to the extent that the student receiving the scholarship aid must maintain such stand-

ards as will probably allow him to graduate at the end of a four year period.

3. I find no authority under the law for the State Board of Education to set standards which holders of state aid scholarships must maintain in order to continue to receive scholarship aid. . . .

The only standard that the student must maintain in order to participate in such scholarships seems to be provided by Section 239.42 which is: 'complete to the satisfaction of the institution the work that he is undertaking each year.'

4. Inasmuch as the Board of Education is responsible for examining and determining the fitness of an applicant for scholarship aid, and is also charged with the duties of filling a vacancy where such exists and making distribution and allocation of unused scholarships, it would be the duty of the State Board of Education to cancel a scholarship and to delete the name of a holder of said scholarship from the authorized list upon being furnished information, from the institution where the holder of the scholarship is receiving his training, to the effect that the said student had not completed the work he is undertaking each year to the satisfaction of the institution and the State Board is satisfied that such information is true and correct.

December 27, 1949—049-617.

**SCHOLARSHIPS—MATURING OF NOTES—CANCELLATION OF
DEBT—ENFORCEMENT OF COLLECTION—§239.24, F. S.
'49 (REPLACING OPINION NO. 049-482)**

QUESTIONS: 1. When do scholarship notes become due and payable in the case of holders of scholarships who do not come within the normal category of four or five years of college training and immediate entry into the teaching profession or state, county or municipal governmental service in Florida?

2. If the answer to question one indicates a date or dates to be determined within the discretion of some individual, board, institution, or agency, then what individual, board, institution, or agency has authority to exercise such discretion?

To: Honorable Thomas D. Bailey, Superintendent of Public Instruction:

.

It is clear that when a person ceases to teach in the public schools of Florida or to render service in connection with the state, county or municipal government in Florida or fails to file with the president of the institution in which he held a scholarship by July 1 of each year a statement as to his previous year's employment and his address for the following year, all notes and the interest thereon shall become due and payable.

When it becomes apparent that the person who has benefited from a scholarship has gotten himself into a position that he cannot satisfy the said notes by teaching (if the beneficiary of a representative scholarship) or by serving the state, county or municipal government (if the beneficiary of a senatorial scholarship), for example, if the beneficiary of a scholarship has quit school and is no longer in a training status or if he should change his course of study so that

even upon receiving a degree he would not be qualified to satisfy the notes other than by the payment of money or if he ceases to teach or to render service to the state, county, etc., it is my opinion that the said notes become due and payable.

It will be noted that Section 239.24, Florida Statutes, provides that the president of the university shall hold the note or notes until it has been paid or cancelled by means of teaching or rendering public service to the state, county, etc., and the section also provides that all principal and interest voluntarily paid on such notes to the institution shall be transmitted by the institution to the state treasurer and credited to the general revenue fund.

My interpretation of this section is that the university shall keep up with these scholarships in so far as possible, giving credit and cancelling notes for teaching and rendering public service, where proof for same is filed, and collecting the principal and interest from beneficiaries who voluntarily pay same and shall transmit notes to the state treasurer only in cases where it is necessary to enforce the collection of the principal and interest on such notes.

Note: This opinion replaces opinion No. 049-482.

December 18, 1950—050-568.

TEACHER SCHOLARSHIPS—LEGAL OBLIGATIONS—SECTIONS
239.19-239.24, FLORIDA STATUTES APPLICABLE

QUESTIONS: 1. (a) Are representative scholarship holders legally obligated to repay scholarship funds received from 1944 to July 1, 1947, in the event they do not teach the required time?

(b) If they are legally obligated to repay the principal, are they also legally obligated for interest on the amount?

2. Inasmuch as senatorial state scholarship holders were exempt from the requirement of teaching two years following graduation from college (and no other form or service was specified prior to July 1, 1947), are these holders legally obligated to repay (with interest) scholarship funds received from 1945 to July 1, 1947, or were these scholarships in the nature of gift scholarships?

To: Honorable Thomas D. Bailey, State Superintendent of Public Instruction, Tallahassee, Florida:

..... the above questions are answered as follows:

1. (a) Representative scholarship holders are legally obligated to repay scholarship funds received from 1944 to July 1, 1947, in the event they do not teach the required time.

(b) Although they are required to repay the amount received under the scholarships, in the event they do not teach the required time, there is no statutory or other obligation for the payment of interest on the said amounts.

2. We find nothing in the statutes indicating any intent or purpose of the legislature to make the senatorial scholarships a donation, but

we feel that it was the intent of the legislature to grant such scholarships on the same basis as the representative scholarships, except the applicant did not have to pledge himself or herself to teach for two years.

BOARD OF CONTROL

January 6, 1949—049-4.

JOHN RINGLING ESTATE—POWER OF TRUSTEES TO USE FUNDS FOR REPAIRS

QUESTION: May the Board of Control lawfully expend any portion of the fund paid to the State of Florida under Paragraph Fourth of the John Ringling will for major repairs or additions to the buildings used for the John and Mable Ringling Museum of Art in Sarasota, Florida?

To: Board of Control, Florida State University:

.....

I have no doubt whatever that in case of emergency a court would promptly authorize use of these funds to preserve the buildings necessary for the housing of the works of art, at least for temporary repairs. Addition to the buildings might present a different problem.

As stated above, there should be no deviation from the terms of the will except under authority of a court order. In the event the Board should consider it impossible to comply with the terms of the will except by use of the principal or interest of the trust fund, suit could be filed to determine whether such moneys might be used for the purposes named in the question.

February 1, 1949—049-39.

CONTRACTS—WITHDRAWAL AND CANCELLATION OF BID, BEFORE ACCEPTANCE—RETURN OF BID DEPOSIT

QUESTION: Where the Board of Control has called for bids for certain construction at one of the institutions under its management, the call stipulating that the Board shall have thirty days after the opening of the bids within which to accept or reject any bid submitted, may a contractor who has submitted the lowest bid lawfully withdraw his bid and demand return of his bid deposit before the Board accepts his bid?

To: The Board of Control, Florida State University, Tallahassee, Florida:

.....

..... it is my opinion that the bidder in this case was entitled to the withdrawal and cancellation of his bid and the return of his bid deposit.

March 10, 1949—049-99.

UNIVERSITY OF FLORIDA—DORMITORY REVENUE CERTIFICATES—SURPLUS PROCEEDS—CONSTRUCTION ANOTHER UNIT

QUESTION: Due to substantial drop in cost of construction, the proceeds from the University of Florida 1948 Dormitory Revenue Cer-

tificates issued as of November 1, 1948, will leave a surplus over and above the cost of the six dormitory units constituting the project which surplus will probably be sufficient to construct another dormitory unit. May such surplus be used for that purpose?

To: Board of Control, Florida State University, Tallahassee, Florida:

.....

Your question is answered in the affirmative.

March 21, 1949—049-113.

STATE EMPLOYEES—ACCUMULATION—LEAVE OF ABSENCE—
DEATH OF EMPLOYEE

QUESTION: If a teacher in one of the State institutions of higher learning dies during the school year—for example, in the month of December—is it lawful to pay his estate for any accumulated leave of absence or vacation with pay?

To: Dr. Doak S. Campbell, President, Florida State University, Tallahassee, Florida:

.....

..... This requires a negative answer to the question.

April 11, 1949—049-155.

REGIONAL EDUCATION—VETERINARY MEDICINE—QUALIFIED
STUDENTS—NONRESIDENTS—PROPOSED CONTRACT—
CHAPTER 24124, ACTS, 1947—EXCEPTIONS

QUESTION: Does the proposed form of Contract for Regional Education in Veterinary Medicine, come within terms of Chapter 24124, Laws of 1947?

To: Board of Control, Florida State University:

.....

The proposed contract for veterinary medical training would come within the terms of Chapter 24124, except that the fixed limit of \$5,000 minimum annual payment would restrict Florida's quota to six students. An appropriation will be necessary in the present session and thereafter. Unless Florida is to be limited to a total of six students in any one regional institution, the act should be amended to remove the \$5,000 limitation as a minimum annual contribution to such institution.

August 31, 1949—049-413.

UNIVERSITY TEACHING STAFF—MEMBERS—ADDITIONAL COM-
PENSATION FROM OTHER STATE AGENCY

QUESTION: Can the members of the teaching staff of the College of Engineering at the University lawfully receive extra compensation from the State Board of Engineer Examiners for services performed for that Board?

To: The Board of Control:

.....

..... There is at this time no law prohibiting the extra com-

pensation you refer to. However, if your Board considers the practice unwise, it could be prohibited by resolution.

September 15, 1949—049-437.

BOARD OF CONTROL AS SUBSTITUTED TRUSTEE OF WESTCOTT
ESTATE—SALE OF REAL PROPERTY—AUTHORITY—
CHAPTER 25107, ACTS 1949

QUESTION: May the Board of Control, as substituted trustees of the estate of James D. Westcott, deceased, sell any of the real property belonging to that estate?

To: Board of Control:

..... It is my opinion that the Board, as substituted trustee, may sell real property belonging to the estate, subject to approval of the State Board of Education as required by Chapter 25107, Laws of 1949.

October 21, 1949—049-505.

SENATORIAL SCHOLARSHIPS—JAMES E. JOHNSON—SEVEN
MONTHS SERVICE—CREDIT ALLOWED FOR—7/12 OF
\$200.00—ANNUAL SCHOLARSHIP AWARD

QUESTION: What amount of service credit should be allowed on a senatorial scholarship for seven months employment as a Rodman with the State Road Department?

To: Honorable J. Edwin Larson, State Treasurer:

..... It is my opinion that it was not the intention of the Legislature to require a full year of state or teaching service before any credit whatever could be allowed on these scholarship notes, but rather that a proportionate credit could be allowed for a part of a year's service; in other words, for seven months of service, credit may be allowed for seven-twelfths (7/12) of \$200.00 the annual scholarship award.

October 28, 1949—049-513.

BOARD OF CONTROL—EMPLOYEES—FEDERAL MINIMUM WAGE
LAW—NOT APPLICABLE TO

QUESTION: Is the Federal Minimum Wage Law applicable to employees of the Board of Control?

To: Board of Control:

..... Your question is answered in the negative.

October 31, 1949—049-525.

RINGLING MUSEUM—PAINTINGS REPAIRED—COSTS—FUNDS
RECEIVED BY STATE—RINGLING WILL

QUESTION: Where the Board of Control is liable for the cost of repairing a painting belonging to the Ringling Museum, from what funds may such costs be paid?

To: Board of Control:

.....
It is my opinion that the repair of the painting may be considered within the authorized use of such fund, and that the bill may be paid from the money which has been received by the State under the Ringling will.

April 4, 1950—050-177.

See: Opinion No. 049-50

**GAINESVILLE, CITY OF—TRAFFIC ON UNIVERSITY OF FLORIDA
CAMPUS—AUTHORITY TO REGULATE**

QUESTION: Does the City of Gainesville, under its present charter, have the authority to enact ordinances regulating traffic on the campus of the University of Florida which lies within its corporate limits and to punish violations of such ordinances by fine or imprisonment upon conviction in the City's municipal court?

To: Board of Control, Tallahassee, Florida:

.....
I concur in the opinions of my predecessors, and answer your question in the affirmative.

.....
May 25, 1950—050-255.

**FLORIDA A. AND M. COLLEGE—NEGROES' HOSPITAL—RECON-
STRUCTION OF CANOPY—RESPONSIBILITY FOR COST**

QUESTION: The Board of Control employed an outside architect to prepare studies, drawings, specifications, etc., for a building to be constructed. Is such architect relieved of responsibility for faulty design by reason of the fact that his drawings, specifications, etc., are subject to approval of the Board's architect?

To: Board of Control:

.....
..... The fact that their work was subject to the approval of the Board's architect does not relieve them to any extent whatever of the duty to prepare, check and be responsible for correct designs, plans, etc. There is nothing in the contract or implied by its terms which would authorize the employed architects to depend upon the Board's architect to correct their errors. Mr. Rogers is responsible for the error, and the cost of correction should be charged to him.

July 11, 1950—050-334.

**BOARD OF CONTROL—AS STATE AGENCY—STUDENTS—
INJURIES—NO LIABILITY**

QUESTION: The institutions under the supervision of the Board of Control offer certain courses in which students make field trips to gather information connected with the courses. If on one of these trips a student were bitten by a poisonous snake, would the board be liable in damages?

To: The Board of Control:

The Board of Control, as an agency of the State, would not be liable for damages. It is probably unnecessary to remind you that on all such trips the institutions have a moral obligation to take such reasonable and appropriate precautions against that danger as would be adopted by a prudent person for his own protection.

July 19, 1950—050-343.

**FLORIDA STATE COLLEGE FOR WOMEN—DORMITORY AND
DINING HALL REVENUE CERTIFICATES—RESERVE
SURPLUS—TRANSFER ALLOWED**

QUESTION: Where there has been accumulated a reserve in the interest and sinking fund over and above the amount required by the resolution authorizing the Florida State College for Women Dormitory and Dining Hall revenue certificates of 1938, may a part of such excess reserve be transferred to the operating and maintenance account to take up a recent operating loss in the dining hall?

To: Board of Control:

.....

In so far as such transfer would leave in the reserve account more than the maximum required by the resolution, it is my opinion that the transfer may be made.

July 19, 1950—050-344.

**BOARD OF CONTROL—LIABILITY INSURANCE—\$243.022;
CHAPTER 25147, LAWS OF 1949**

QUESTION: May the Board of Control purchase liability insurance covering the operation of motor vehicles of the Florida State University, the policy bearing a so-called Governmental Agency Endorsement, Form K-350?

To: Board of Control, Tallahassee, Florida:

The endorsement in effect provides that the insurance company will not plead the State's immunity in the event of certain highly improbable contingencies. As I read the endorsement, its practical effect, in the absence of those contingencies, is to recognize a right in the insurance company to plead the State's immunity to liability in tort.

The Business Manager of the University very aptly questions the acceptability of a policy bearing such endorsement.

The statute under which the Board of Control is authorized to purchase such insurance is Chapter 25147, Laws of 1949, and now appearing in the statutes as Section 243.022. That statute expressly provides that the insurer shall not be entitled to the defense of governmental immunity and, further, waives the Board's immunity to the extent of liability insurance carried.

The endorsement is in direct conflict with the statute, and your Board may not lawfully pay a premium for any policy containing any such provision.

When a State agency, in pursuance of authorizing statute, purchases liability insurance, it is the intent and purpose of the State

to provide compensation for any person injured by a tort attributable to the agency; and it is the purpose of the State to waive its immunity to the extent of the insurance carried. By way of illustration, I will add that very recently, in a case where the insurance company undertook to defend an action for damages against another State agency, this office required the insurer (1) to withdraw an unlimited plea of the State's immunity which it had filed and (2) to plead the State's immunity as to any liability in excess of the amount of the insurance carried.

July 21, 1950—050-349.

**FLORIDA A. AND M. COLLEGE FOR NEGROES—FOOTBALL GAME
—NAME "ORANGE BLOSSOM CLASSIC"—EXCLUSIVE
USE—INJUNCTION**

QUESTION: How may the Florida Agricultural and Mechanical College for Negroes obtain exclusive right to the use of the name "Orange Blossom Classic" for a football game in this State?

To: Board of Control:

For many years, the Florida Agricultural and Mechanical College for Negroes has climaxed its football season with a highly publicized game with another outstanding Negro football team, and the game has become known all over the country as the "Orange Blossom Classic." It is my understanding that heretofore the name has not been used for any football game other than that of Florida Agricultural and Mechanical College for Negroes.

By long use, the College has acquired the exclusive right to that name, and it is my opinion that its exclusive use within this State can be protected promptly and effectively by injunction.

November 21, 1950—050-530.

**ADVANCE STUDY—EXPENSES—COMPUTING INCOME
TAX—WHETHER DEDUCTIBLE**

QUESTION: Does the holding of the 4th Circuit Court of Appeals in *Hill v. Commissioner of Internal Revenue*, 181 F. 2d 906, authorize professors of the University, in computing income tax, to deduct from their income, expenses incurred by them advanced study?

To: Honorable J. Hillis Miller, President, University of Florida, Gainesville, Florida:

.....

If, having a teaching job, a professor were required to make advance studies in order to hold his position, he might be entitled to make such deduction under the above cited case; but, in the absence of such requirement as a condition of holding his job, the cited case does not appear to warrant the deduction of such expense from his gross income.

MISCELLANEOUS EDUCATIONAL LAWS

January 20, 1949—049-20.

HIGH SCHOOL SORORITY—PROHIBITED—SECTION 242.46, F. S.

Question: Would the formation of high school sorority be prohibited by Florida law?

To: Mr. Fred R. Wilson, Attorney, Board of Instruction, Seminole County, Atlantic Bank Building, Sanford, Florida:

.....
The question must, therefore, be answered in the affirmative.

February 24, 1949—049-78.

**FOREIGN BORN CHILD—NATURALIZATION OF BOTH PARENTS—
CHILD A CITIZEN**

QUESTION: Is a person a citizen of the U. S. who was born in Russia June 28, 1910 of alien parents, said parents and child having moved to the U. S. in 1914 and the parents having become naturalized citizens in 1927?

To: Honorable Thomas D. Bailey, Superintendent, Department of Education, Tallahassee, Leon County, Florida:

.....
Since the parents of the person in question were naturalized when he was residing in the U. S. and he was under 18 years of age at the time it is my opinion that under the above quoted statute he is a citizen.

June 2, 1949—049-239.

**COUNTY SCHOOL BOARD MEMBERS—COMPENSATION—SECTION
242.02, F. S. '41—APPLICABLE**

QUESTION: It has been noted that Section 44 (242.02) of Chapter 23726, Acts of 1947 sets the date of January 1, 1951, after which County School Board Members shall not receive special compensation provided by local acts, while Section 27, (236.02-9) sets July 1, 1951, as the date after which School Board Members shall receive only the compensation authorized by general law.

In view of the above conflict in effective dates, which of the two sections would, in your opinion, prevail?

To: Honorable Thomas D. Bailey, Superintendent, Department of Education:

In my opinion Section 242.02, as amended, provides by general law for compensation of all county school board members and is effective on January 1, 1951. In the absence of any later statute to the contrary, the effect of this act as amended is to fix salaries of all county school board members throughout the state by general law.

Section (236.02-9) is not in conflict with Section 242.02 since under Section 242.02 every county must go under the general law six months prior to July 1, 1951.

August 12, 1949—049-370.

**FLORIDA SCHOOL FOR DEAF AND BLIND—ADMISSION RE-
QUIREMENTS—RESIDENTS OF STATE—AGES**

QUESTION: A deaf and dumb boy was born in Honduras on March 17, 1930, at which time his father was in business in that country. The boy's father was born in Spanish Honduras of American parents. The boy's mother, now divorced, was and is a citizen of Honduras. The boy's father first came to the United States in 1944 and engaged in business in South Florida. The boy arrived in the United

States in September 1947, but due to his inability to speak or understand language, was excluded from admission to the United States as a citizen. However, he was allowed to remain here with his father for an indefinite period in order to obtain medical care and schooling, and now resides in the State. May he be admitted to the School for the Deaf and Blind?

To: Board of Control:

..... it is my opinion he may be admitted to the school.

December 21, 1949—049-604.

COUNTY SCHOOL BOARD MEMBERS—COMPENSATION—MEETINGS ATTENDED—SECTION 242.02, FLORIDA STATUTES 1941

QUESTION: May a member of a county board of public instruction draw compensation under Section 242.02 for every meeting attended up to the maximum permitted, or should compensation be pro-rated with a view to equalizing current and succeeding months and by what method?

To: Honorable Thomas D. Bailey, Superintendent of Public Instruction:

.....

In answering your question, therefore, I am of the opinion that school boards, although not legally required to do so, should as a matter of policy voluntarily attempt to either apportion their meetings as evenly as possible throughout the year or to voluntarily prorate the amount of compensation they are to receive by limiting the amount each member shall requisition each month for his compensation regardless of the number of meetings held during the month.

March 2, 1950—050-102.

SEE: OPINION NUMBER 050-85

COUNTY BOARD PUBLIC INSTRUCTION—CANDIDATES FOR NOMINATION—FILING FEES—REQUIREMENTS—BAKER COUNTY

QUESTION: What is the filing fee required of a candidate for nomination for the office of school board member in Baker County, Florida, in the 1950 primaries?

To: Honorable Joe Dobson, Clerk Circuit Court, Macclenny, Florida:

.....

For the purpose of fixing the three per cent filing fee required by Section 102.31, the annual compensation for this office shall be computed on the number of regular and special meetings of the Baker County school board in 1949 at \$10 for each meeting but in no event not less than twelve meetings (the number of regular monthly meetings required during the year) and not more than eighteen meetings (the limit for which compensation is allowed under Section 242.02). For example, if there were twelve meetings in 1949, the annual compensation referred to by Section 102.31 will be \$120; and in the like manner to be figured for 1949 meetings in excess of twelve at \$10 for each meeting up to eighteen meetings, but in no event in excess of eighteen (such limit being \$180). Properly, the same figure for annual compensation should have been used in fixing the party assessment for this office.

CHAPTER XIV

MILITARY CODE AND RELATED MATTERS

MILITARY CODE

May 14, 1949—049-215.

UNITED STATES PROPERTY LOST WHILE IN CUSTODY OF NATIONAL GUARD—PAYMENT—GENERAL EXPENSES

QUESTION: By what process and from what fund is payment to United States made for lost or destroyed military property?

To: *Honorable C. M. Gay, State Comptroller:*

.....
The payment of the value of United States property lost or destroyed while in custody of the National Guard is a current general expense of the military department and is legally payable out of the fund for current expenses of the military department, upon requisition of the Adjutant General, approved by the Governor by warrant drawn to the treasurer of the United States.

May 31, 1949—049-237.

UNITED STATES PROPERTY LOST WHILE IN CUSTODY OF NATIONAL GUARD—PAYMENT—STATE COMPTROLLER

STATEMENT: Combine this opinion with former opinion No. 049-215—same subject.

To: *Honorable C. M. Gay, State Comptroller:*

.....
The Comptroller is authorized to make payment to the United States of the value of military property issued to the National Guard which may have been lost or destroyed before the officer charged with its care has remitted to the Comptroller the value of such property. Such payment by the Comptroller to the United States does not discharge or relieve the officer having the care of such property under his protection, nor his surety, from liability to the state for its value, which must be collected from such officer or his surety and covered into the fund for current expenses of the military department in reimbursement.

June 7, 1949—049-244.

STATE—COUNTY—CITIES—OFFICERS AND EMPLOYEES—ENTITLED TO LEAVES OF ABSENCE WITH PAY FOR NATIONAL GUARD DUTY

QUESTION: Are the administrative officers of state agencies, the several counties and municipalities within the state required to grant to any officer and employee of such agencies who is a member of the Florida National Guard, leave of absence from his duties without loss of pay, while engaged in active duty, field exercises or other training?

To: *Honorable Fuller Warren, Governor:*

.....
The question is accordingly answered in the affirmative.

CHAPTER XV

PUBLIC LANDS AND PROPERTY

INTERNAL IMPROVEMENT FUND

November 4, 1949—049-559.

TRUSTEES INTERNAL IMPROVEMENT FUND—FLORIDA BOARD OF FORESTRY—CERTAIN LANDS—DISPOSITION BY— AUTHORITY—RESTRICTIONS

QUESTION: Would provisions contained in the deed which the Florida Board of Forestry has to Sections 25, 26, 27, 28, 29, 32, 33, 34, 35 and 36, Township 37 South, Range 21 East, prohibit the sale or exchange of this land?

To: Honorable C. H. Coulter, State Forester, Tallahassee:

.....
The history of the transaction as above recited discloses that the conveyance of the lands by the receiver to the Trustees of the Internal Improvement Fund was a dedication of the lands to be used and employed for "state park and forest purposes only."

.....
It is my opinion the Florida Board of Forestry would be authorized to sell or exchange these lands provided these same restrictions are contained in the deed of conveyance and the grantee under such deed would be restricted to the use of the lands as above noted.

August 22, 1949—049-397.

TRUSTEES INTERNAL IMPROVEMENT FUND—HIGHWAYS— RIGHT-OF-WAY—ABUTTING OWNERS—RIPARIAN RIGHTS—RELEASES REQUIRED

QUESTION: Where the trustees of the internal improvement fund of this state conveys the shore and submerged lands across a navigable stream to some state or local agency for highway and bridge purposes, is such title sufficient for such purpose without also obtaining a release of the riparian rights of abutting owners?

To: Honorable Charles W. Luther, Daytona Beach, Florida:

.....
Where there is any question of riparian rights which may be adverse to the use of a highway it would seem advisable that releases be obtained from such owners as to the right-of-way for such highway. A conveyance by the trustees of the internal improvement fund of submerged and shore lands as a right-of-way for a highway would not affect any vested riparian or littoral rights of abutting owners. The above question is, therefore, answered in the negative in cases where there are riparian or littoral rights of third persons affecting the said right-of-way. Where there is doubt as to the existence of such rights the only safe course to follow is to also procure such releases.

August 4, 1950—050-380.

CONVEYANCE OF LANDS TO UNITED STATES FOR EVERGLADES
NATIONAL PARK—AUTHORITY OF TRUSTEES

QUESTION: Did the Trustees of the Internal Improvement Fund of this State have legal power and authority to convey the lands described in their deed numbered 19588, bearing date of April 12, 1950, and conveying certain lands in Township 58 South, Range 37 East, and certain hiatus lands between Ranges 36 and 37 East, and certain water bottom lands in Florida Bay, to the United States for Everglades National Park purposes?

To: *Honorable Nathan Mayo, Commissioner of Agriculture:*

The lands in Township 58 South, Range 37 East, and between Ranges 36 and 37 East, appear to have been among the lands granted to the State by the swamp and overflowed lands act of the Congress adopted in 1850. We are not advised whether said lands are lands which vested in the Trustees of the Internal Improvement Fund by reason of the Internal Improvement Act of 1855 or whether they are lands coming to the said Trustees under subsequent acts or authority. The authority of the Trustees to convey these lands was granted to them under Sections 253.01 et seq. and 264.09, Florida Statutes. This seems to dispose of the authority of the Trustees of the Internal Improvement Fund to make conveyance of the lands in Township 58 South, Range 37 East, and the hiatus lands lying between Ranges 36 and 37 East, leaving only the question of the authority of the said trustees to convey the water bottom lands in Florida Bay.

The lands in question being water bottom lands lying in Florida Bay, it must be presumed that such lands came to the State as sovereignty lands, when it was admitted as a state in 1845, for the benefit of its inhabitants. Under Sections 253.06 to 253.15, Florida Statutes, the following classes of sovereignty lands were vested in the Trustees of the Internal Improvement Fund with power of sale: (1) islands, sand bars, shallow banks and small islands, made by the process of dredges of the channel by the United States Government, (2) islands, sand bars, and shallow banks, upon which the water is not more than three feet deep at high tide and which are separated from the shore by a channel or channels not less than five feet deep at high tide, and (3) sand bars and shallow banks along the shore of the mainland; where such lands had not on or before May 21, 1917, been vested in other parties by or under authority of other statutes or laws. If the lands described by the said deed as lying in Florida Bay are lands within the above classifications, then the Trustees of the Internal Improvement Fund had power and authority to convey them for the purposes mentioned. Whether or not the lands in question were within the above classifications is a question of fact to be passed upon in the first instance by the Trustees themselves. The rule announced in the case of *Caples v. Taliaferro*, 144 Fla. 1, 197 So. 861, text 871, for the construction and application of the statutes relating to swamp and overflowed lands, may well be applicable to the construction and application of said Sections 253.06 to 253.15, Florida Statutes.

Under the presumption that public officers have complied with the laws under which they act, we presume that the Trustees' determination of facts, when the said deed was executed, accords with law.

STATE LIBRARY

June 24, 1950—050-312.

STATE LIBRARY BOARD—USE OF APPROPRIATION—CONTRACTS—TRANSFERS OF FUNDS

QUESTIONS: 1. Must the State Library Board comply strictly with the terms and items in its budget, especially when its over all appropriation is not sufficient for the proper operation of its State Library?

2. Where the State Library Board enters into a two year contract, with a non-state agency, for the furnishing of certain services and information, will such contract continue and remain in force and effect after said two year period of time although there has been no renewal or extension thereof?

3. Where the State Library Board and a non-state agency enter into a contract, wherein and whereby the non-state agency agrees to furnish the Board with certain information and services for a period of two years, must the Board further recognize that agreement as binding after the expiration of said agreement?

4. Do the general and statutory duties of the State Library Board, under Chapter 257, Florida Statutes, take precedence over contract duties of the Board with a non-state agency for information and services?

To: The State Library Board, New Supreme Court Building:

..... It, therefore, appears that the Library Board is required to comply with the terms and items approved for its use by the Budget Commission under Sections 216.17 and 282.08, Florida Statutes, unless and until the same be altered or changed by the said Budget Commission.

Under the circumstances, and in the absence of any express statute providing otherwise, we do not feel that the contract entered into with the Florida Historical Society was a continuing obligation of the Library Board extending beyond the time fixed in and by the said agreement. This seems to answer the second question, as well as the third question. Furthermore, before the amount of compensation fixed by the said agreement may be paid, there must be an appropriation from which the same may be paid and an item therefor must be approved by the State Budget Commission under Sections 216.17 and 282.08, Florida Statutes.

..... The question of whether the general and statutory duties of the State Library Board, under Chapter 257, Florida Statutes, should have precedence over contractual obligations of the Board will largely depend upon the nature of the said contractual obligations. This might depend upon whether the services to be performed under the contract were to be considered as a part of the current expenses of operating the above constitutional provisions and the above opinion.

The answer to the above fourth question must, therefore, depend upon the facts and circumstances in each case.

EVERGLADES NATIONAL PARK

December 19, 1950—050-572.

GOVERNOR'S CONSENT—EXPENDITURE STATE APPROPRIATED MONIES—RIGHT-OF-WAY LEADING TO EVERGLADES NATIONAL PARK—AUTHORITY

QUESTION: Do I, as Governor of Florida, have the authority to give my consent to the Director of National Park Service to expend monies for the purchase of rights-of-way leading into the Everglades National Park which have been appropriated by the State of Florida for the acquisition of lands which will constitute part of the Everglades National Park?

To: Honorable Fuller Warren, Governor of Florida:

.....

I call your attention also to the case of *Watson v. Larson*, 33 So. 2d. 155, in which the Court said in part:

"Finally the legislature concluded that it was better policy to place these funds in the control of the United States Government to acquire the remaining lands found necessary for the park rather than have a state agency use the funds in acquiring the land."

If the land to be acquired for road rights-of-way lies "within the Everglades National Park area" it is my opinion that monies appropriated by the State of Florida for the acquisition of this Park may be used for the purpose of purchasing rights-of-way which would afford ingress and egress to and from the Park so long as these rights-of-way will be designated by the Department of Interior, National Park Service, as part of the Everglades National Park, and that while your consent for this expenditure is not necessary, yet you may give your consent to such expenditure if you so desire and that it will not be necessary for you to be joined in this consent by any other state official.

CHAPTER XVI

PUBLIC BUSINESS

GENERAL AND MISCELLANEOUS APPROPRIATIONS

February 4, 1949—049-43.

BOARD OF CONTROL—STATE BUDGET COMMISSION—TRANSFER FUNDS FROM STENGEL FIELD PROJECT TO BUCKMAN HALL, UNIVERSITY OF FLORIDA

QUESTION: May the Board of Commissioners of State Institutions and the State Budget Commission lawfully approve transfer of \$6500, derived from the operation of Stengel Field Housing Project at Gainesville, to the repair and renovation of Buckman Hall at the University?

To: *Florida State Improvement Commission, P. O. Box 149, Tallahassee, Florida:*

.....

There still remains the question as to what disposition is to be made of the \$6500. It is my opinion that this income may be paid into the incidental fund of the University of Florida under Section 3, Chapter 23915, Laws of 1947, the general appropriation act, and use of these funds for the purposes set up in your question may lawfully be authorized.

March 11, 1949—049-97.

BOARD OF CONTROL—FISCAL AGENTS SELLING DORMITORY REVENUE CERTIFICATES—FEE—PAYMENT FROM APPROPRIATION

QUESTION: May the compensation agreed to be paid to the Board of Control's fiscal agents for service in the sale of the 1948 University of Florida Dormitory Revenue Certificates be paid from the appropriation to the Board for "Dormitories; to assist in construction of self-liquidating projects" provided in Chapter 23882, Laws of 1947?

To: *Board of Control, Florida State University, Tallahassee, Florida:*

..... It is my opinion that the fee agreed to be paid the fiscal agents may be paid from the above appropriation.

July 13, 1949—049-314.

SUPREME COURT BUILDING—APPROPRIATION—BUILDING FUND LAWS—CHAPTER 23882, ACTS 1947—§§282.24, 282.25, 282.26, F. S.

QUESTIONS: 1. May \$20,000 be transferred from the appropriation made by Section 282.25, Florida Statutes, to the \$1,455,000 appropriation contained in Section 282.26, Florida Statutes, for the Supreme Court building, thereby increasing it by that amount?

2. May the balance remaining in the Capital Center Electrical Distribution System appropriation, made by Section 282.24, Florida Statutes, be transferred to the \$1,455,000 appropriation contained in Section 282.26, Florida Statutes, for the Supreme Court building, thereby increasing it by the amount of said balance?

3. May the balance remaining in the Capital Center Central Heating System appropriation, made by Section 282.24, Florida Statutes, be transferred to the said appropriation for the Supreme Court building?

To: *Honorable C. M. Gay, State Comptroller:*

..... It is my opinion that the first question must be answered in the affirmative.

..... Therefore, it appears that the second and third questions must be answered in the negative.

February 4, 1950—050-66.

CONTINUING APPROPRIATIONS REPEALED—EXCEPTIONS—
EMPLOYMENT AGENCY ACT—ELEVATOR INSPECTION
—SEC. 282.001-282.002, CHAP. 449, 399

QUESTIONS: 1. Are monies and fees collected by the Florida Industrial Commission under authority of Chapter 449, Florida Statutes, the Private Employment Agency law, trust funds within the meaning of subsection 26 of section 2, Chapter 25068, Laws of Florida, Acts of 1949?

2. Are fees and fines collected by the Florida Industrial Commission under authority of Chapter 399, Florida Statutes, the Elevator Act, trust fund within the meaning of subsection 26 of section 2, Chapter 25068, Laws of Florida, Acts of 1949?

3. If your answer to questions one and two are in the negative, may the budget commission under authority of subsection 26, section 2 of Chapter 25068, Laws of Florida, Acts of 1949, set up these funds in questions one and two as trust funds?

To: *Honorable Raymond Barnes, Chairman, Florida Industrial Commission:*

..... your first question is answered in the negative.

..... As to your second question, I am of the opinion that the fees and monies collected under Chapter 399 are not trust funds and therefore are continuing appropriations repealed by section 1 of Chapter 25068, supra.

..... this question is answered in the affirmative.

February 21, 1950—050-81.

SCHOOL BOARD LIABILITY—PUBLIC LIABILITY INSURANCE—
RIGHTS OF COUNTY—PURCHASE OF INSURANCE—
§282.091, F. S.

QUESTIONS: 1. Do counties have legal authority to expand county funds for the premium for public liability insurance?

2. Assuming such an expenditure to be legal and proper, is such insurance advisable for a small county in the general public interest?

To: *Honorable Raymond E. Ford, Clerk Circuit Court, Ft. Pierce, Florida:*

(1) this question is answered in the negative.

(2) The answer to the first question makes unnecessary any attempt to answer this one.

November 21, 1950.—050-533—049-204.

EVERGLADES FIRE CONTROL DISTRICT—PURCHASE OF
TRACTOR—APPROPRIATIONS AND BUDGETS—
SECTION 282.05, FLORIDA STATUTE APPLICABLE

QUESTION: Does the Everglades Fire Control District have authority to purchase a tractor on a time payment basis, i.e., so much down and the balance in equal monthly installments with interest at 6% on the unpaid balance, when available funds are not sufficient to pay the entire purchase price under the current budget?

To: *Honorable Guy J. Bender, Chief, Everglades Fire Control District, Belle Glade, Florida:*

. the question, as presented by you, must be answered in the negative.

However, under certain circumstances a rental contract with an option to purchase at a later date might be permissible. See opinion of the Attorney General 049-204 dated May 11, 1949, copy enclosed. Since Chapter 19274, Laws of 1939, establishing the Everglades Fire Control District authorizes the district to purchase, lease, rent or hire such equipment or machinery as deemed necessary to carry out its fire control functions, and since a new tractor might well be considered as essential equipment for the performance of the duties and responsibilities of the District, I can see no legal objection to the rental of such equipment at a specified reasonable monthly rate, with an option to purchase the tractor at such time as funds for that purpose may become available. If such rental contract could be agreed upon between the District and the company selling the tractor, this suggestion might offer a solution to your immediate problem.

PUBLIC PRINTING AND STATIONERY

October 24, 1949—049-504.

STATE CONTRACTS—MATERIALS AND SUPPLIES—PURCHASES—
FAVOR FLORIDA MERCHANTS—NO VIOLATION INTER-
STATE COMMERCE CLAUSE—U. S. CONST.

QUESTIONS: (1) Could the state pay five percent more to Florida merchants for materials and commodities than to out-of-state merchants without violating the interstate commerce clause of the United States Constitution?

(2) Can the state lawfully pay five per cent more for commodities and materials to Florida merchants than to out-of-state merchants?

(3) In view of Section 4, Article IX, of the Constitution, can the state grant a subsidy to any class of citizens without an appropriation therefor by the legislature?

To: Honorable Fuller Warren, Governor of Florida:

It is here assumed that these questions relate to the purchase by the state, through appropriate agencies, of materials and commodities in those instances where no statute requires that such be done on a competitive basis. Hence, it is to be distinctly understood that the discussion and conclusions below exclude those instances where competitive bidding is required or where preference must be given to, or work or material furnished by, persons or concerns within this state, it being obvious that in such instances, particular applicable statutes are controlling.

.....

The questions are answered in their numbered order as follows:

(1)..... Hence, the question is answered in the affirmative.

(2)..... For this reason, such grave doubt exists concerning the legal propriety of this procedure that the question is answered in the negative.

(3) The answer to question (2) would seem to render unnecessary a discussion of this question.

June 22, 1950—050-309.

PUBLIC PRINTING—PLAIN RULED NOTEBOOK PAPER—NOT INCLUDED—§283.03, FLORIDA STATUTES

QUESTION: Does Section 283.03 of the statutes, which requires public printing to be done in the State, include plain ruled notebook paper?

To: Board of Control, Tallahassee, Florida:

.....

It is my opinion that such paper is not public printing within the meaning of the statute referred to.

July 1, 1950—050-326—050-309.

PUBLIC PRINTING—STATIONERY—PURCHASED WITHOUT EXTRA PRINTING COST—NOT WITHIN PURVIEW OF §283.03, FLORIDA STATUTES

QUESTION: Do the following items come within the provisions of Section 283.03 of the statutes, requiring printing to be done in the State: (1) a small pocket-sized spiral notebook bearing on its outside cover the words "The Spiral—No. 480"; (2) a letter-sized spiral notebook bearing on its front cover the following words, "Composition Fillers—Spiral bound", above which appears in large letters "U of F"; (3) packages of ruled notebook paper, punched for ring binder, held together by a paper band about six inches wide, on which appears the following: "No. 1 College Fillers—Wide ruled—Size 8½ x 11—Marginal ruled—Punched 3 holes", above which appears in large letters "U of F"; (4) unruled notebook paper held together by a paper

2. Assuming such an expenditure to be legal and proper, is such insurance advisable for a small county in the general public interest?

To: *Honorable Raymond E. Ford, Clerk Circuit Court, Ft. Pierce, Florida:*

.....
(1)..... this question is answered in the negative.

(2) The answer to the first question makes unnecessary any attempt to answer this one.

November 21, 1950.—050-533—049-204.

EVERGLADES FIRE CONTROL DISTRICT—PURCHASE OF
TRACTOR—APPROPRIATIONS AND BUDGETS—
SECTION 282.05, FLORIDA STATUTE APPLICABLE

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However, under certain circumstances a rental contract with an option to purchase at a later date might be permissible. See opinion of the Attorney General 049-204 dated May 11, 1949, copy enclosed. Since Chapter 19274, Laws of 1939, establishing the Everglades Fire Control District authorizes the district to purchase, lease, rent or hire such equipment or machinery as deemed necessary to carry out its fire control functions, and since a new tractor might well be considered as essential equipment for the performance of the duties and responsibilities of the District, I can see no legal objection to the rental of such equipment at a specified reasonable monthly rate, with an option to purchase the tractor at such time as funds for that purpose may become available. If such rental contract could be agreed upon between the District and the company selling the tractor, this suggestion might offer a solution to your immediate problem.

PUBLIC PRINTING AND STATIONERY

October 24, 1949—049-504.

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(3) In view of Section 4, Article IX, of the Constitution, can the state grant a subsidy to any class of citizens without an appropriation therefor by the legislature?

To: Honorable Fuller Warren, Governor of Florida:

It is here assumed that these questions relate to the purchase by the state, through appropriate agencies, of materials and commodities in those instances where no statute requires that such be done on a competitive basis. Hence, it is to be distinctly understood that the discussion and conclusions below exclude those instances where competitive bidding is required or where preference must be given to, or work or material furnished by, persons or concerns within this state, it being obvious that in such instances, particular applicable statutes are controlling.

The questions are answered in their numbered order as follows:

(1) Hence, the question is answered in the affirmative.

(2) For this reason, such grave doubt exists concerning the legal propriety of this procedure that the question is answered in the negative.

(3) The answer to question (2) would seem to render unnecessary a discussion of this question.

June 22, 1950—050-309.

PUBLIC PRINTING—PLAIN RULED NOTEBOOK PAPER—NOT INCLUDED—§283.03, FLORIDA STATUTES

QUESTION: Does Section 283.03 of the statutes, which requires public printing to be done in the State, include plain ruled notebook paper?

To: Board of Control, Tallahassee, Florida:

It is my opinion that such paper is not public printing within the meaning of the statute referred to.

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band about six inches wide on which appears the following, "Notebook Filler—To fit standard 3 ring notebook—40 sheets" and a large letter "F" with facsimile of University of Florida seal and the word "Florida"?

To: Board of Control:

You explain that these articles are purchased at exactly the same price (1) with the above described or similar printed matter thereon, or (2) with the manufacturer's name and brand, or (3) blank, that is, without any printed matter.

You are purchasing stationery, not printed matter. The exercise of your option to get the stationery with the printed matter described above without extra cost does not bring the transaction within the meaning of Section 283.03.

STATE FIRE INSURANCE FUND

June 16, 1949—049-263.

FLORIDA COUNCIL FOR BLIND—VENDING STANDS—EQUIPMENT—MERCHANDISE—ELIGIBLE FOR COVERAGE

QUESTION: Are vending stands, their equipment and merchandise, which Florida Council for the Blind operates in the several cities in the state, by and through blind persons who are licensed by the Council to operate such stands, eligible for insurance in the State Fire Insurance Fund?

To: Honorable J. Edwin Larson, State Treasurer:

.....

The vending stands, their equipment and merchandise, operated by Florida Council for the Blind in the manner set forth in the question, constitute property insurable in the State Fire Insurance Fund.

May 3, 1949—049-189.

FLORIDA PARK SERVICE—GOLF CLUB HOUSE—JACKSON COUNTY—ELIGIBLE FOR COVERAGE

QUESTION: Florida Park Service has made application for coverage in the state fire insurance fund of the golf club house and its contents at Florida Caverns State Park in Jackson County, Florida. A golf professional is paid a salary by the Florida Park Service to operate such club house and golf course located in said state park. From information available, it appears that Florida Park Service has control and supervision of said club house and its contents. Are such club house and contents insurable in the state fire insurance fund?

To: Mr. C. R. Phillips, Clerk, State Fire Insurance Fund:

.....

In my opinion the above described club house and the equipment and content thereof, which are the property of Florida Park Service, are eligible for coverage in the state fire insurance fund. (See Chapter 284, Florida Statutes, 1941, particularly Sections 284.01 and 284.04).

April 11, 1950—050-191.

FLORIDA STATE IMPROVEMENT COMMISSION—INSURANCE—
EXCESS OF MAXIMUM—JURISDICTION OF— CHAP-
TER 284, FLORIDA STATUTES

QUESTIONS: 1. Where a building or structure, within the purview of Chapter 284, Florida Statutes, has an insurable value in excess of the maximum permitted to be carried in the state fire insurance fund and is insured in excess of such maximum amount with some fire insurance company, as provided in Section 284.08, Florida Statutes, from what fund should the premium for such insurance be paid?

2. Are buildings and structures, owned by or standing in the name of the Florida State Improvement Commission, within the purview of Chapter 284, Florida Statutes, so as to permit their being insured under said chapter as other state buildings and structures are insured thereunder?

To: *Honorable C. M. Gay, State Comptroller:*

The first question presupposes that the building or structure in question is within the purview of Chapter 284, Florida Statutes. Where a building or structure is within the purview of said chapter 284, Florida Statutes, but has a valuation in excess of the maximum permitted to be carried in the state fire insurance fund (see Section 284.08, Florida Statutes) and is insured in excess of such maximum amount with same insurance company, as provided in Section 284.08, Florida Statutes, the premium for such insurance should be paid from the appropriation contained in item 51, section 1, Chapter 25370, Laws of Florida, Acts of 1949, the same being the general appropriation act for the current biennium. In this connection we feel that the appropriation contained in said Section 284.08, Florida Statutes, was a continuing appropriation and that it was, in so far as it amounted to a continuing appropriation, repealed by Section 1, Chapter 25068, Laws of Florida, Acts of 1949. We do not think that said continuing appropriation was a fund "received for insurance" within the purview of Subsection 16 of Section 2 of said Chapter 25068. These observations seem to answer the first question above.

The second question is to be determined by ascertaining whether or not buildings and structures financed and constructed by the Florida State Improvement Commission are within the purview of said Chapter 284.08, Florida Statutes. A perusal of Chapter 420, Florida Statutes, indicates that such a building or structure may or may not be within the purview of said Chapter 284.

. The said building might be classified as a state building under Chapter 284, Florida Statutes, with the State's interest therein subject to the insured under said Chapter 284. Whether or not such building should be insured under said Chapter 284, and the amount of insurance that should be carried thereon under said chapter, if to be insured, will depend upon the circumstances in each case. Under the statute it is within the jurisdiction of the Board of Commissioners of State Institutions to determine whether the State has an insurable interest in the building and the amount of that interest subject to insurance under Chapter 284. This seems to be an answer to the second question.

CHAPTER XVII

PENSIONS AND WAR VETERANS

CONFEDERATE PENSIONS

August 10, 1949—049-382.

CONFEDERATE PENSIONER—INCOMPETENCY—PENSION WARRANT TO GUARDIAN OR CURATOR OF—§291.24, FLORIDA STATUTES NOT APPLICABLE

QUESTION: Where a confederate pension warrant is made payable to a guardian or curator of a confederate pensioner, because of the incompetency of the said pensioner, are the provisions of Section 291.24, Florida Statutes, applicable?

To: Honorable J. Edwin Larson, State Treasurer:

.....

In the light of these observations I do not think that it is necessary for the curator to comply with said Section 291.24, Florida Statutes, so that the above question should be answered in the negative.

SERVICE OFFICERS

February 22, 1949—049-76.

DEPARTMENT VETERANS' AFFAIRS—LIABILITY INSURANCE NOT REQUIRED

QUESTIONS: 1. Is it necessary for the Department of Veterans' Affairs to carry insurance for protection of the department against claims for injuries to the public?

2. Is it necessary for said department to provide public liability and property damage insurance only as excess coverage on auto accidents by employees of the department while on official duty?

To: Honorable David L. Wiley, State Service Officer, Department of Veterans' Affairs, Pass-A-Grille, Florida:

1. Inasmuch as there is no requirement of law that the Department of Veterans' Affairs carry the insurance described, this question is answered in the negative.

2. The answer to this question is likewise in the negative, inasmuch as such insurance coverage is not required by law.

December 19, 1949—049-603.

VETERANS AFFAIRS—ASSISTANT STATE SERVICE OFFICER—EXCLUSIVE REPRESENTATION—§292.05, F. S. '41

QUESTION: Does the Department of Veterans Affairs have the authority to employ and pay out of state funds an assistant state service officer or other personnel who shall represent only one veterans'

organization and may refuse to represent a veteran who has designated the Department of Veterans Affairs as his representative?

To: Mr. Melvin T. Dixon, State Service Officer:

.....

Your question is therefore answered in the negative.

June 28, 1950—050-322.

VETERANS' SERVICE OFFICER—ELIGIBLE TO HOLD TWO COUNTY POSITIONS

QUESTION: May a person who is presently employed (as finance officer) in the office of a County Superintendent of Public Instruction be employed by the board of county commissioners of such county as veterans' service officer for such county by the board of county commissioners and hold and perform the functions of both county positions at the same time?

To: Honorable Roger L. Jones, Superintendent of Public Instruction, Okeechobee County:

.....

..... In the absence of statute or some rule or regulation of the board of county commissioners or the board of public instruction of this particular county forbidding an individual to hold two such positions, the only other impediment would be a situation wherein the duties of the two employments would be incompatible. . . .

Hence, in my opinion, conditioned as above set forth, this question is answered in the affirmative.

November 14, 1950.—050-525.

VETERANS' BUREAU—PUBLIC RECORD—CERTIFIED COPY WITHOUT CHARGE—§293.15, FLORIDA STATUTES

QUESTIONS: 1. Are the certified copies of public records made available without charge to veterans pursuant to Section 293.15, Florida Statutes, limited to guardianship cases.

2. Does above law apply to other cases for copies of certified documents requested by veterans?

3. Is the clerk entitled to a fee from the board of county commissioners for making said certified copies?

To: Honorable George J. Dykes, Clerk of Circuit Court, Tavares, Florida:
Question one and two above will be treated together.

.....

Reference is made to Opinions 046-157 and 046-360, Attorney General's Biennial Report 1945-1946, copy attached.

In view of the foregoing it is my opinion that in any case where a person applies for any of the benefits available by the veterans' bureau and said bureau requires certified copy of any public record in order to determine the eligibility of said applicant either upon direct request of the bureau or upon display of said request by the applicant, said certified copy of public record shall be furnished free

of charge to said applicant or bureau by the official charged with the custody of such public record.

As to your third questions, I find no law which provides that the clerk be paid a fee from the board of county commissioners for making said certified copy of public record pursuant to Section 293.15 above.

Therefore your third question is answered in the negative.

LAWS RELATING TO VETERANS, GENERALLY

August 3, 1950—050-377.

MERIT SYSTEM—VETERAN'S PREFERENCE—§295.09, FLORIDA STATUTES

QUESTIONS: 1. Is a veteran under the provisions of Section 295.09, Florida Statutes, 1949, entitled to preference therein set forth upon each promotional examination he takes until he receives a promotion?

2. Where an employee is reinstated after absence in military service and is promoted from a register established prior to his entrance in the service and prior to the enactment of 295.09, Florida Statutes, 1949, is he entitled to veteran's preference on each promotional examination until he receives another promotion?

To: *Honorable Angus Laird, Merit System Supervisor, Tallahassee, Florida:*

. Hence Question One is answered in the affirmative.

The veteran not having had the benefit of the preference in his first promotion is, if he is to profit by the legislation, entitled to the ten or five points, as the case may be, or subsequent promotional examinations until he receives an additional promotion. This answers Question Two.

CHAPTER XVIII

DRAINAGE

GENERAL DRAINAGE

April 29, 1949—049-185.

GAME AND FRESH WATER FISH COMMISSION LANDS WITHIN EVERGLADES DRAINAGE DISTRICT—ASSESSMENT— VALIDITY QUESTIONABLE

QUESTIONS: 1. Are the lands of the game and fresh water fish commission lying within the Everglades Drainage District liable for the assessments for such drainage district?

2. Are the lands of the game and fresh water fish commission lying within drainage districts created by special acts of the legislature subject to the assessments made for such districts?

3. Are the lands of the game and fresh water fish commission lying within drainage districts created under the general drainage statutes of this state (Chapter 298, Florida Statutes) subject to the assessments of such districts?

To: Game and Fresh Water Fish Commission:

..... we feel that the first question should be answered in the negative.

..... No general answer may be made to the second question so that it is not answered.

..... I feel that the third question probably should be answered in the negative until the point is settled by some court having jurisdiction.

.....

August 10, 1949—049-368.

STATE PROPERTY—INLAND NAVIGATION DISTRICT TAXES— NOT SUBJECT TO

QUESTION: Are lands held by the State of Florida, including Murphy act lands, and by the Trustees of the Internal Improvement Fund of said state, subject to the assessment and levy of Inland Navigation District taxes?

To: Trustees of the Internal Improvement Fund:

.....
In the light of the above observations, and finding no express authority by statute in the navigation districts to assess state property, we answer the above question in the negative.

August 23, 1949—049-395.

PALM CITY DRAINAGE DISTRICT—ASSESSMENTS—SEPARATE TAX ROLL REQUIRED—MARTIN COUNTY

QUESTION: May the drainage assessments of the Palm City Drainage District, in Martin county, Florida, be made on the county

tax roll with county taxes or must there be a separate tax roll for such assessments?

To: Honorable C. M. Gay, State Comptroller:

.....

The County Commissioners, as ex officio supervisors of the said drainage district, and the Clerk of the Circuit Court, as ex officio secretary of the said drainage district, should follow the provisions of Sections 298.37 et seq., Florida Statutes, in levying the annual installments of the total tax, preparing the "drainage back tax book" and in collecting current and delinquent drainage assessments. We do not think that Chapter 22147, Laws of Florida, Acts of 1947, made any change in the method of assessing the annual installments of the total tax and the collection of the current and delinquent assessments.

March 30, 1950—050-162.

WEST COAST INLAND NAVIGATION DISTRICT—COMMISSIONERS ALLOWED DISTRICT FUNDS TO SURVEY INLAND CANAL

QUESTION: May the board of commissioners of the West Coast Inland Navigation District, under the authority of Chapter 23770, Laws of Florida, Acts of 1947, or otherwise, in order to determine the advisability for constructing the proposed inland navigation canal within the said district, expend district funds for the purpose of making a preliminary survey to determine the advantages of the proposed canal without an extension from mouth of the Anclote river to St. Marks, and with such an extension, which would complete the inland waterway from Texas to east Florida, in order to determine the advisability of constructing the canal through the said West Coast Inland Navigation District?

To: Honorable J. B. Fuqua, Attorney, West Coast Inland Navigation District, Palmetto, Florida:

.....

If the purpose of the survey is as above pointed out we feel that the above question should be answered in the affirmative.

July 18, 1950—050-348.

BALDWIN DRAINAGE DISTRICT—ASSESSMENTS—COUNTY SETTLEMENT—TAX DELINQUENT LANDS—SALE—DISTRIBUTION—CHAPTER 298, FLORIDA STATUTES

QUESTION: Where title to lands within the Baldwin Drainage District, in Duval County, Florida, was vested in the county, by virtue of Section 194.47, Florida Statutes, and sold by the said county pursuant to said statute, through what years should the drainage assessments be made for the purpose of settling with the county in connection with such sale?

To: Honorable C. M. Gay, Comptroller:

.....

..... the calculations made by the Clerk pursuant to the above statutes should include county and drainage taxes for the year in which the final decree of foreclosure was entered.

CHAPTER XIX

PORTS AND HARBORS

PILOT COMMISSIONERS AND PILOTS

September 14, 1950—050-442.

PILOT COMMISSIONERS, BOARD OF—PILOT LICENSE—PAROLEE —FEDERAL FELONY—§§310.03, 310.05, FLORIDA STATUTES APPLICABLE

QUESTIONS: 1. Where a man was under parole for a Federal felony at the time he was granted a pilot's license for the Port of Boca Grande, was it improper to license him?

2. Where such pilot has not yet had his civil rights restored, is it the duty of the Pilot Commissioners of said Port to replace him with another pilot?

To: Honorable Lonnie Futch, Chairman of Pilot Commissioners, Boca Grande, Florida:

A pilot is not an officer (State ex rel. Attorney General v. Jones, 16 Fla. 306). Therefore, it is not necessary that he possess the qualifications which the law prescribes for public officers.

It is only necessary that a pilot have the qualifications prescribed by law for pilots. Section 310.03, Florida Statutes, is the statute which prescribes those qualifications. . . .

.

Said statute does not prohibit the issuance of a pilot's license to a person who is under parole for a Federal felony, and therefore there was no legal impropriety in issuing a pilot's license to such person.

.

Therefore, it is not your duty to replace the pilot in question with another pilot.

HARBORMASTERS FOR PORTS IN GENERAL

February 16, 1950—050-75.

KEY WEST HARBOR—HARBORMASTER FEES—VESSEL FEES— STATE DISCRIMINATION—§313.05, F. S. '41

QUESTION: Are schooners coming into the port of Key West for shrimp fishing subject to harbor master fees?

To: Mr. Keller Watson, Harbor Master, Key West, Florida:

.

Therefore, in view of the foregoing, it is my opinion that your question is answered in the affirmative.

.

May 25, 1950—050-256.

HARBOR MASTERS—JURISDICTION—POWERS—DUTIES—AUTHORITY—CHAPTERS 313, 314, FLORIDA STATUTES APPLICABLE

QUESTIONS: 1. What jurisdiction, powers, duties and authority have harbor masters, appointed pursuant to Chapter 314, Florida Statutes, over vessels entering or using the harbors within the purview of said statutes?

2. Do such harbor masters have the power of arrest for the violation of Chapters 313 and 314, Florida Statutes, or of the rules and regulations made pursuant to said chapters?

To: Honorable Keller Watson, Harbor Master, Key West, Florida:

The harbor master in question appears to have been appointed under and pursuant to Chapter 314, Florida Statutes, so that the provisions of said chapter, as well as those provisions of Chapter 313, Florida Statutes, which are not in conflict with said Chapter 314, are applicable. Under the said statutes harbor masters (1) are ex-officio members of the board of port wardens and pilot commissioners (Section 314.03, Florida Statutes); (2) are authorized to appoint deputies to assist them in the performance of their duties (Section 314.04, Florida Statutes); (3) are required to check each vessel coming into port for health certificate, when health certificates are required (Section 314.05, Florida Statutes); (4) assign stations to vessels coming into port (usually upon the request of the person in charge of such vessel) in the stream or harbor, at a berth or at a wharf, in such manner as will best facilitate loading and unloading (Sections 313.04 and 314.06, Florida Statutes); (5) station such vessels so as to interfere as little as possible with other vessels using the port and its facilities (Section 314.06, Florida Statutes); (6) remove or cause to be removed, when necessary for the proper operation of the port, all vessels not loading or unloading, so as to make room for other vessels requiring accommodations, and to do all things necessary to facilitate loading or unloading (Section 313.04, Florida Statutes); (7) determine how far, and in what instances, it may be the duty of one vessel to accommodate another in their respective stations when loading or unloading (Section 313.04, Florida Statutes); (8) be present or available, either in person or by deputy, at all times for assigning vessels to berths or stations within the harbor (Sections 313.04 and 314.07, Florida Statutes); (9) authorize the change of stations by vessels in port when necessary or required or for the better operation of the facilities of the port (Section 314.09, Florida Statutes); and (10) collect the fees authorized under the statutes (Sections 313.08 and 314.10, Florida Statutes).

The first of the above questions seems to be answered by the observations above contained in the first paragraph following the questions; the second question is answered in the negative. These observations give general answers to the questions posed in the request for opinion. The questions posed by the said request may be more specifically answered as follows:

1. Harbor masters appointed pursuant to the statutes and laws of this State, although exercising a part of the

police powers of the state, are not peace officers with authority to make arrests. Whenever any of the statutes and laws under the jurisdiction of harbor masters are violated they should procure warrants for the arrest of such violators.

2. Where a harbor master directs the moving of a vessel from one location to another in the harbor, and the captain or other person in charge of such vessel refuses to move the same, the harbor master should procure a warrant for such person, under Section 313.06, Florida Statutes, for disobeying an order given by the harbor master. I am of the further opinion that the harbor master has authority to move such vessel, or cause it to be moved; however, there is doubt as to the method of enforcing any expense incurred in connection with the moving of the said vessel.

3. Inability of the crew of a vessel, by reason of intoxication, to move the same would be no excuse for failure to obey an order of the harbor master to move the same and failure to obey such an order would be a criminal offense.

4. If the harbor master has the equipment for moving a vessel I am of the opinion that he has the authority to move the same or cause it to be moved when necessary for the proper operation and use of the harbor; however, there is some doubt as to the enforcement of any expense incurred in moving such vessels. It may take litigation to determine the question of the right of the harbor master to his costs and expenses in moving a vessel as aforesaid.

5| Under the law if the space used by a vessel which has completed its loading or unloading is needed its removal may be directed by the harbor master. Likewise in cases of emergency one vessel may be required to give way to another vessel although its loading or unloading be incomplete. No vessel should be required to give way to another except in an emergency.

6. The question of the number of vessels that may anchor in one location, or tie up to a dock, may be determined by the harbor master where such regulation is necessary by reason of the number of vessels in port at any time.

The above observations seem to answer the material questions propounded by the request for opinion above mentioned.

CHAPTER XX

MOTOR VEHICLES

REGULATION OF TRAFFIC ON HIGHWAYS

February 12, 1949—049-50.

STATE INSTITUTIONS—ESTABLISHMENT OF SPEED ZONES— POWER NOT VESTED IN STATE ROAD DEPARTMENT

QUESTION: May the State Road Department establish speed zones for driveways upon the grounds of the University of Florida lying within the City of Gainesville?

To: Honorable Alfred A. McKethan, State Road Department, Tallahassee, Florida:

.....

In the light of the above and foregoing observations it does not appear that the State Road Department, under Section 317.24, Florida Statutes, has any power or authority to fix speed zones within such municipality, although the premises in question belong to the State. The above question is answered in the negative.

June 23, 1949—049-273.

MUNICIPAL POLICE OFFICERS—AUTHORITY—ARRESTS FOR VIOLATIONS STATE LAWS—NO AUTHORITY— PROSECUTION

QUESTIONS: 1. In the absence of an ordinance, does a municipal police officer have the authority to make an arrest for violation of Chapter 317, Florida Statutes, 1941, relating to traffic regulations?

2. In the absence of an ordinance, does a municipal police officer and/or municipal court have the authority to prosecute for violation of Chapter 317, Florida Statutes, 1941?

To: Honorable H. N. Kirkman, Director, Department of Public Safety:

..... The first question is answered in the affirmative.

The existence or absence of a city ordinance does not affect the answer to the second question. There is no power vested in a municipal police officer to prosecute for the violation of a state penal statute. Neither is a municipal court vested with authority to prosecute an offender for the violation of a state statute. The proper procedure in such cases is that when it develops that the offense for which a culprit is arrested by a municipal officer is the violation of a state statute that the municipal court bind the accused over to the state authorities for prosecution. The second question is accordingly answered in the negative.

October 15, 1949—049-492.

PAMPHLETS THROWN INTO MOTOR VEHICLES—PUBLIC HIGH- WAYS—NO VIOLATION OF §317.72, FLORIDA STATUTES ANNOTATED

QUESTION: "I desire an opinion on the enclosed pamphlets as to their violation of Florida Statutes, Section 317.72, when they are thrown into motor vehicles along the public highways?"

To: *Honorable J. L. Pellicier, Constable, Bunnell, Florida:*

It does not appear that the pamphlets which you enclose are violation of the act, as they do not relate to hotels, restaurants, apartments or the numerous things set forth in the act, as you will see by the enclosed copy of the act.

February 22, 1950—050-96.

**DUMP TRUCKS DEFINED—EXEMPTIONS—SEMI-TRAILERS—
§317.73 FLORIDA STATUTES 1941**

QUESTION: Does the exemption granted to "dump trucks" by Chapter 26331, Laws of Florida, 1949, Extraordinary Session, from the provisions of Section 6, Chapter 25342, Laws of Florida, 1949, General Session, apply to semi-trailers defined by the cited chapter, which are equipped with gravity or mechanical means for unloading?

To: *Captain J. Wallace Smith, Executive Officer, Department of Public Safety:*

.....

The question is accordingly answered in the negative.

May 10, 1950—050-236.

MOTOR VEHICLES—SPEED LAWS—RECKLESS DRIVING—CHAPTER 317, FLORIDA STATUTES APPLICABLE

QUESTION: Does the operation of a motor vehicle at a rate of speed greater than the rate prescribed by Section 317.22, Florida Statutes, constitute reckless driving per se?

To: *Honorable John D. Justice, County Judge, Sarasota County, Sarasota, Florida:*

.....

Your question is accordingly answered in the negative.

July 27, 1950—050-366.

**PUBLIC HIGHWAYS—SPEED ZONES—ESTABLISHMENT—ENFORCEMENT—AMELIA ISLAND—NASSAU COUNTY—
SECTIONS 317.22-317.24, FLORIDA STATUTES
APPLICABLE**

QUESTION: Who has authority to post speed limit signs along the beach road (a public highway) on Amelia Island, Nassau County, and enforce said speed limit?

To: *Honorable H. J. Youngblood, Sheriff, Nassau County, Fernandina, Florida:*

.....

..... if the area in question can be classified as a residential area, the lawful speed, as prescribed by the above statute, is 25 miles per hour. In that event, appropriate signs may be erected giving notice of said lawful speed zone in the area in question, either by the county or the State Road Department depending upon whether the road is maintained by the county or the State Road Department. It is my opinion that the sheriff has authority to enforce said lawful speed by virtue of Section 317.22, above.

I am assuming that the area in question is outside of any municipal territorial limits.

Section 317.24, Florida Statutes, in providing for the establishment of state speed zones, states that:

"Whenever the state road department shall determine, upon the basis of an engineering and traffic investigation, that any speed hereinbefore set forth is *greater or less* than is reasonable or safe under the conditions found to exist at any intersection or other place, or upon any part of a highway outside of municipalities, said state road department, may determine and declare a reasonable and safe speed limit thereat which shall be effective when appropriate signs giving notice thereof are erected at such intersection or other place or part of the highway."

Under this last quoted statute, you will note that a greater or lesser speed limit than that provided in Section 317.22 may be prescribed by the State Road Department in certain exceptional cases.

I feel sure that a request addressed to the Chairman of the State Road Department would produce further cooperation in solving your traffic problem.

MOTOR VEHICLES

December 20, 1950.—050-573.

MOTOR VEHICLES—DUMP TRUCKS—MAXIMUM WEIGHTS— §320.40, FLORIDA STATUTES APPLICABLE

QUESTION: "Since Chapter 25342, Laws of 1949, set a weight limitation on dump trucks, and Chapter 26331, Laws of 1949 Extraordinary Session, relieved these trucks from weights imposed by Chapter 25342, does Section 320.40, Florida Statutes, apply to dump trucks now in operation?"

To: Col. H. N. Kirkman, Director, Department of Public Safety:

.....

This explanation of the statute answers your question in the affirmative.

MOTOR VEHICLE COMMISSIONER

July 25, 1949—049-352.

AUTHORIZED TO ISSUE NEW TITLE CERTIFICATE TO PUR- CHASER UNDER FORCED SALE—ENDORSEMENT ALL LIENS RECORDED—ORDER OF PRIORITY

QUESTION: Does Chapter 25150, Laws of Florida, 1949, authorize or direct the recordation of liens upon motor vehicles created by or arising from a writ of execution issued upon a judgment and placed in the hands of a sheriff for levy and return?

To: Honorable Arch Livingston, Jr., Motor Vehicle Commissioner:

.....

The question is accordingly answered in the negative.

TITLE CERTIFICATES

January 5, 1949—049-1.

EFFECT OF §319.23 F. S.—NOT RETROACTIVE

QUESTION: Are the provisions of Chapter 23658, Laws of Florida, 1947 (Section 319.23, Florida Statutes, 1941) retroactive in effect to govern certificates of title issued by the commissioner prior to the effective date of the statute?

To: Honorable Arch Livingston, Jr., Motor Vehicle Commissioner:

..... The question is accordingly answered in the negative.

January 5, 1949—049-2.

APPLICATION—SURRENDER OF FOREIGN LICENSE PLATES NOT REQUIRED—§319.23(3) F. S.

QUESTION: Does chapter 23658, Laws of Florida 1947, (section 319.23, sub-paragraph (3), Florida Statutes, 1941) require that the Commissioner upon application for issue of license plates to do and surrender of license plates issued by foreign states as a condition precedent to the issue of Florida license?

To: Honorable Arch Livingston, Jr., Motor Vehicle Commissioner:

..... The question is accordingly answered in the negative.

February 19, 1949—049-67.

FOREIGN VEHICLE—REGISTRATION—SURRENDER OF EVIDENCE—FLORIDA LICENSE PLATES—APPLICATIONS

QUESTIONS: 1. May a lien upon a motor vehicle, evidence by a mortgage, trust receipt, conditional sales contract or similar instrument, be recorded in the office of the Motor Vehicle Commissioner without the issuance of a Florida certificate of title to the motor vehicle?

2. May the owner of a motor vehicle previously titled or registered outside of this State, secure a certificate of title from this State without being required to register the vehicle with the Motor Vehicle Commissioner and to secure a license plate therefor?

To: Honorable Arch Livingston, Jr., Motor Vehicle Commissioner, Tallahassee, Florida:

1. The first question is accordingly answered in the negative.

2. This question is accordingly answered in the negative.

April 14, 1949—049-159.

MOTOR VEHICLE COMMISSIONER—NO AUTHORITY—ISSUANCE—TITLE CERTIFICATE TO MORTGAGEE—JUDICIAL PROCEDURE REQUIRED

QUESTION: Is the Motor Vehicle Commissioner of the State of Florida, under the General Laws of 1947, Chapter 23658, (No. 44), Senate Bill No. 108, Section 9, permitted to issue a certificate of title

to a motor vehicle in favor of a mortgagee, upon default in performance of the terms of a chattel mortgage, without judicial procedure?

To: *Honorable Arch Livingston, Motor Vehicle Commissioner:*

.....

The question is accordingly answered in the negative.

July 20, 1949—049-342.

INSURANCE—RATE FILING—AUTOMOBILE FLEET PLAN—NOT
CONSIDERED—OWNED BY ONE INSURED— UNDER
ONE MANAGEMENT

QUESTION: A company in Florida (herein referred to as company) is interested in more than 300 trucks which have been delivered by it to various business concerns in this state (herein referred to as customers) under conditional sale and service agreement relevant provisions of which are set forth below. Title to each vehicle is retained by the company until the required purchase price and contract terms have been met by the customer. Certificate of title is issued to the customer covering the truck delivered. The company maintains insurance on all trucks delivered to customers under the afore-said agreements. The insurer of these trucks has adopted a filing with the Insurance Commissioner with respect to rates applicable to an automobile fleet plan which contains, among other features, the following provisions:

"A risk of five or more automobiles of any type owned by one insured and under one direct operating management may be written under a policy automatically covering all licensed automobiles and all trailers owned by the insured during the policy period."

In the light of the foregoing, may these trucks so delivered by the company to these various customers, be considered as "owned by one insured," and "under one direct operating management," as such words are used in the above quoted rate filing provision?

To: *Honorable J. Edwin Larson, Insurance Commissioner:*

.....

..... the question is answered in the negative.

July 21, 1949—049-344.

FORCED SALE—PURCHASER ACQUIRES—TITLE CERTIFICATE—
§319.28, FLORIDA STATUTES 1941

QUESTION: By what statutory proceeding may the purchaser of a motor vehicle sold for storage charges under authority of a municipal ordinance, secure a certificate of title to such vehicle in a case where the motor vehicle is impressed with a lien or liens duly recorded in the office of the Motor Vehicle Commissioner?

To: *Honorable Arch Livingston, Motor Vehicle Commissioner:*

The answer to the question presented is governed by the application of the provisions of Section 319.28, Florida Statutes, 1941, which

provide for the issuance of certificate of title to a motor vehicle when transfer of the ownership thereof is affected by operation of law.....

.....

The purchaser of the motor vehicle pursuant to sale by operation of law acquires title and ownership thereto subject to all liens existing upon the vehicle, a record of which appears in the office of the Commissioner and which have not been legally satisfied or wiped out.

January 27, 1950—050-49.

**CLEAR TITLE—JUDICIAL SALE—FORFEITURE PROCEEDINGS—
§319.15, 562.39, F. S. '41**

QUESTIONS: 1. Should a clear title to a motor vehicle be issued to a purchaser of such vehicle at a sale under the provisions of Section 562.39, Florida Statutes 1941, as against a lienor claimant without a cause having been instituted in the circuit court where at the time of seizure of such vehicle such lienor claimant has not perfected his claim of lien on such vehicle under Section 319.15, Florida Statutes 1941?

2. Should a clear title to a motor vehicle be issued to a purchaser of such vehicle at a sale under the provisions of Section 562.39, Florida Statutes, 1941, as against a lienor claimant without a cause having been instituted in the circuit court where such lienor claimant has perfected his lien on said vehicle under Section 319.15, Florida Statutes 1941, at the time of seizure of said vehicles, and such lienor was notified by the Director of the Beverage Department of the automobile seizure, that forfeiture proceedings under Section 562.39 were being instituted and the manner in which said lienor may protect his interest as provided in said statute, but said lienor failed to file a claim or bond as required by said Section 562.39, Florida Statutes, 1941?

To: Honorable Arch Livingston, Motor Vehicle Commissioner:

The answer to both of the questions presented is governed by the provisions of Section 319.28, Florida Statutes 1941, being Chapter 25150, Section 7, Laws of Florida, 1949.

.....

Transfer of ownership of a motor vehicle under forfeiture proceedings provided by Section 562.39, Florida Statutes 1941, falls within the classification of transactions designated in paragraph (1) as "other judicial sale." It will be noted that paragraph (2) requires that the applicant for new certificate shall present an affidavit setting forth facts entitling him to possession and ownership, together with a copy of the journal entry, court order or instrument upon which such claim of possession and ownership is founded.

Paragraph (3) requires that the Commissioner shall upon issuing a new certificate after a determination that the evidence presented is sufficient to justify such issuance endorse upon the new certificate a statement of all liens upon the vehicle, a record of which has been perfected in the office of the Commissioner, unless such application is accompanied by proper evidence of their satisfaction or extinction or is accompanied by proof that at least five days' notice by registered mail prior to the date of application for new certificate has been

served upon each lienholder. Each lienholder so notified is given a period of ten days from the date of receiving the notice to file with the Commissioner his protest against the issuance of a new certificate without showing existing liens. An additional ten days is accorded each lienholder to proceed by legal proceedings in support of his protest. Utmost care should be exercised by the Commissioner to assure himself that all conditions precedent to his authority to issue a new certificate have been strictly observed and complied with.

Forfeitures are not favored in law or equity and a statute authorizing the same is subject to strict construction and must be strictly complied with.

May 2, 1950—050-226.

MOTOR VEHICLE COMMISSIONER—TITLE CERTIFICATES—
LIENS EXPUNGED FROM RECORD—NO JURISDICTION
—CHAPTER 319, FLORIDA STATUTES

QUESTIONS: 1. Where the owner of a motor vehicle, registered in another state, brought the same into this state and, about December 9, 1947, sold and transferred the same to another who caused the same to be registered with the Motor Vehicle Commissioner, who, on December 9, 1947, issued a title certificate therefor showing no liens of record against the said vehicle, however, on February 11, 1948, a lien executed by a prior owner was filed in the office of the Motor Vehicle Commissioner, and subsequent transfers of the title certificate have been made without any reference to the said lien having been made; under these circumstances is the said lien an encumbrance upon the title of the said vehicle?

2. If the foregoing question is answered in the negative, then by what procedure should the record title of the vehicle be cleared and the record of the said lien be expunged from the record?

To: Honorable Arch Livingston, Motor Vehicle Commissioner, Tallahassee, Florida:

..... Under said Sections 28.22 and 319.15, Florida Statutes, no lien, for purchase money or debt, encumbering a motor vehicle may be enforced in this State "against creditors or subsequent purchasers for a valuable consideration and without notice" unless a sworn notice of such lien is filed as provided in said statutes. Only the transaction of December 9, 1947, was without constructive notice of the said lien, which constructive notice was created by the filing on February 11, 1948, under said Section 319.15, Florida Statutes. If the purchaser, to whom the original title certificate of December 9, 1947, was one for a valuable consideration and without notice he took title free and clear of the said lien (*Woods v. Thompson*, 159 Fla. 112, 31 So. 2d. 62; *Lee v. Bank of Georgia*, 159 Fla. 481, 32 So. 2d. 7; *Inman v. Rowsey*, Fla. 41 So. 2d. 655) otherwise his purchase was made subject to the said lien. Whether or not the purchase was for a valuable consideration and without actual notice is a question of fact to be determined by some proper authority. This seems to answer the first question in so far as the first purchaser in this state and the title certificate issued on December 9, 1949, is concerned.

As the subsequent title certificates mentioned above were issued after the filing of the said notice of lien, such purchasers took subject to that notice of lien in so far as the notice was concerned; however, they also took the title of the first purchaser in this state as evidenced by the title certificate of December 9, 1949, so that if the said first purchaser took free and clear of the said lien they did also without regard to their constructive notice by the filing of the lien in the office of the Motor Vehicle Commissioner. (45 Am. Jur. 509, Section 148, Note 9; 55 Am. Jur. 1118, Section 759; 63 A. L. R. 1362 et seq.; and see also *Feinberg v. Stearns*, 56 Fla. 279, 47 so. 797, text 798 and 799 relating to real property). The lien in question having been recorded in the office of the Motor Vehicle Commissioner prior to the effective dates of Chapters 23658 and 25150, supra, the rule there announced has no application to said lien. Here, as in the last above paragraph, the question of payment of a valuable consideration and of notice is material and may be the decisive issue in answering the first question.

Under our answer to the first question, although the lien in question may not and probably does not bind the motor vehicle in question, the answer must depend in part upon the question of valuable consideration and actual notice so that whether or not the lien now encumbers the title to the vehicle is one which might involve the determination of facts. From the applicable statutes we find no authority in the Motor Vehicle Commissioner to make a determination of these facts and expunge the record of the lien from his records. In order to do so a judicial determination of the fact of actual notice or want of actual notice, as well as the payment of a valuable consideration, must be made. We do not think that such a jurisdiction has been vested in the commissioner.

June 6, 1950—050-277—050-226.

MOTOR VEHICLES—TITLES—LIENS—CLAIMS—PRIORITY— VALIDITY

QUESTION: Where a motor vehicle is registered in this State, and certificate of title is issued or due to be issued showing no record of any mortgage, lien or other claim encumbering the said motor vehicle, but subsequent to such application or issuance of certificate of title, application is made to the Motor Vehicle Commissioner for the recording of a mortgage, lien or other claim, bearing date subsequent to October 1, 1948, purporting to encumber the said motor vehicle and to be superior to the claim of the owner or other claimants of record, what disposition should be made of the said application for recording by the Motor Vehicle Commissioner?

To: *Honorable Arch Livingston, Motor Vehicle Commissioner:*

.....

Although the above question is not answered by the provisions of Section 319.24, Florida Statutes, said section may suggest the method of handling circumstances such as those involved herein.

.....

In the light of the above observations we feel that when a notice of lien or other encumbrance upon a motor vehicle is received by the Commissioner, either after the filing of an application for cer-

tificate of title or recognizing the said alleged lien or other claim or after the issuance of the certificate of title, he should issue a notice addressed to the owner of the motor vehicle and the lien claimants requiring that they either, agree among themselves as to the priority of the alleged lien, or take proper court proceedings to settle the said conflict. He should also notify the person presenting the alleged lien for record that he is withholding the record of the said lien until after the said conflict is settled, unless the lien claimant requests a return of it. We do not think that it is within the jurisdiction of the Motor Vehicle Commissioner to determine the validity of a lien or other claim, or its enforceability or unenforceability, when the question of the application or priority of such lien or claim is brought into issue by instruments filed in his office. This seems to answer the above question as definitely as it may be answered.

August 24, 1950—050-415.

MOTOR VEHICLE COMMISSIONER—TITLE CERTIFICATES—
LIEN SATISFACTION—FEE FOR RECORDING—
CHAPTER 319, FLORIDA STATUTES

QUESTION: Is the Motor Vehicle Commissioner authorized to require payment of the statutory fee of fifty cents for the recording of satisfaction of a lien in a case where application for certificate of title is made by the holder of the lien, upon transfer of ownership by operation of law has been effected under the provisions of Section 319.28, Florida Statutes?

To: *Honorable Arch Livingston, Motor Vehicle Commissioner:*

.

In cases where a fee of one dollar has been paid for the notation of a lien upon a certificate of title and the lien is afterward satisfied by the holder thereof as indicated upon the certificate of title, the fee for the cancellation of that lien is absorbed in the initial fee charged, but such is not the case where a new certificate is issued to a new owner after cancellation or satisfaction of the lien has been recorded upon the lien records of the Commission. This particular exception applies only to liens filed after August 1, 1949.

With the stated exception the question is answered in the affirmative.

LICENSES

February 17, 1949—049-59.

AUTOMOBILE LICENSES—EXEMPTIONS—NONRESIDENTS— UN-
EMPLOYED KENTUCKY INSTITUTE PERSONNEL EXEMPT

QUESTIONS: (1) Is the owner of a motor vehicle, who is a non-resident of the State of Florida, not engaged in any occupation, business or profession, but whose residence in the State is incidental to the employment of her husband, who has not entered any child in the public schools of Florida, exempt from the imposition of license tax under the provisions of Section 320.38, Florida Statutes, 1941?

(2) Is nonresident personnel of Kentucky Military Institute whose motor vehicles are registered in Kentucky required to secure Florida

license plates during the seasonal three months period when the Institute conducts its branch school in Florida?

To: Honorable Arch Livingston, Jr., Motor Vehicle Commissioner, Tallahassee, Florida:

.....

..... the first question is accordingly answered in the affirmative.

..... The answer to the second question is accordingly in the negative.

May 5, 1949—049-197.

**MOTOR VEHICLE COMMISSIONER MAY WAIVE STATUTORY
REQUIREMENTS UNDER RECIPROCAL AGREEMENTS—
MAINTENANCE TAGS**

QUESTION: May the motor vehicle commissioner of this state waive the requirements of Section 320.73, Florida Statutes, for overweight or maintenance license and tags for overweight motor vehicles, when there exists a reciprocal agreement, under Section 320.39, Florida Statutes, 1941, with the state wherein such motor vehicle has its situs and is duly registered and licensed?

To: Honorable Arch Livingston, Motor Vehicle Commissioner:

.....

For the purpose of this opinion we presume that the reciprocal agreements in question are not agreements or compacts with other states within the purview of Clause 3, Section 10, Article I, of the Federal Constitution, or if within said constitutional provision that they have the approval of Congress. (see *Va. v. Tenn.* 148 U. S. 518, 13 S. Ct. 728, 38 L. Ed. 537).

.....

I am, therefore, of the opinion that the above mentioned question should be answered in the affirmative when within such reciprocal agreement.

June 16, 1949—049-259.

**DEALER NOT ALLOWED TO CHARGE CUSTOMER USING LOANED
DEMONSTRATION VEHICLE BEARING SERIES "M" TAGS**

QUESTION: May a registered dealer in motor vehicles, maintaining a motor vehicle repair department, loan to one of his customers a motor vehicle owned by such dealer bearing a series "M" or dealers' demonstration tag, for use without compensation for a short period of time and while a motor vehicle of said customer is undergoing repairs in the said dealer's repair department, without obtaining a "for hire" license for the vehicle so loaned?

To: Honorable Arch Livingston, Motor Vehicle Commissioner, Tallahassee, Florida:

.....

The above question, therefore, is answered conditionally in the affirmative.

August 12, 1949—049-384.

**FLORIDA MOTOR VEHICLE SAFETY LAW—OVERLOADING—
PENALTY—INTERPRETATION—CHAPTER 25342, ACTS 1949**

QUESTIONS: 1. Under the provisions of Chapter 25342, Laws of 1949, if a vehicle is apprehended with one or more axles overloaded, but the total overload does not exceed the permitted 10 per cent tolerance of the true gross weight, shall such vehicle be penalized on the axle overload, or would the fact that it is within the limits of the gross load cancel the axle load violation?

2. If such vehicle is penalized on the axle overload, does each axle overload constitute a separate violation?

3. Does the 10 per cent tolerance as indicated above apply also to the axle load as specified in Section 6, paragraph 1, Acts of 1949?

4. If your answer to question 3 is in the affirmative, would the penalties in Section 9, paragraph 3, be applicable at the 18,000 pound limit specified in Section 6, paragraph 1, or would they be applicable after the 10 per cent tolerance is allowed and begin at 19,800 pounds?

To: Honorable Arch Livingston, Motor Vehicle Commissioner:

Answering question 1. . . . The overloading of any one or more axles of a motor vehicle is regulated separately and apart from the regulation of the gross over all weight permitted. If it be determined that any one axle carries a load in excess of the weight specified, the amount of overweight would be subject to the assessment per pound as set forth in Section 9, paragraph 3 of the act, regardless of whether the gross maximum weight of the load upon all axes is exceeded.

Answering question 2, the act imposes no penalty for overloading except the assessment per pound upon the amount of the overload as set forth in Section 9 (3) of the act. In the event more than one axle is found to be overloaded, the assessment of penalty would be computed upon the aggregate amount of overload upon the several axles.

Answering question 3, the same is answered in the affirmative.

Answering question 4, it is the clear intention of the statute that the tolerance of 10 per cent upon the prescribed maximum weight to be permitted in determining scale weights shall apply as well to the gross weight per axle as to the gross weight of the vehicle and load. Any vehicle which is loaded per axle with a weight in excess of 19,800 pounds would come within the requirements of the act.

December 1, 1949—049-571.

**FLORIDA STATE WELFARE BOARD—SELECTED AUTO TAG NUM-
BERS—CONTINUING APPROPRIATION REPEALED
BY CHAPTER 25068, ACTS 1949**

QUESTION: Was the continuing appropriation contained in subparagraph 3 of Section 320.72 of the Statutes of 1941, to the State Welfare Board, repealed by the 1949 session of the Legislature?

To: *Florida State Welfare Board, P. O. Box 989, Jacksonville, Florida:*

. That continuing appropriation was repealed by Chapter 25068 of the Laws of 1949.

December 3, 1949—049-574.

BOARD OF CONTROL—FACULTY MEMBERS—STUDENTS—
TRANSPORTATION—MOTOR VEHICLES—NEGLIGENCE—LIABILITY FOR

QUESTIONS: (1) In taking field trips with small classes, faculty members or students going on the field trips sometimes use their own cars to transport the students to and from these classes. It has been the practice for the students thus transported to contribute to what is supposed to be the cost of the transportation to the owner or operator of the car. Under such circumstances, what is the liability of the owner or operator of the car?

(2) On the supposition that the transportation of the students is exclusively for their benefit, how may liability for personal injury which might be suffered by the transported students be reduced?

To: *Board of Control, Tallahassee, Florida:*

In so far as the University does not provide the transportation, the question pertains to private rights and liabilities. For that reason, what is said herein is not to be construed by the owner or operators of such automobile as a guide for their conduct. They should consult their own attorneys. The following comments are for whatever they may be worth to those interested.

. It is my opinion that the student thus transported would be a paying passenger, and that, therefore, the owner or operator, or both, would be liable for injury to such student arising from ordinary negligence, even though the exception in the guest statute should be held inapplicable.

In considering how such liability might be eliminated or reduced, the question immediately arises as to whether it can be accomplished by contract.

.
Our Court has not directly held whether or not one may contract against his ordinary negligence. In *Ringling Bros.-Barnum & Bailey C. Shows vs. Olvera*, 119 F. 2d 584, which was a case arising in the Southern District of California, the Circuit Court of Appeals, 9th Circuit, construing the Florida law, reached the conclusion that such a contract would not be contrary to the public policy of this State. I agree with the conclusion reached in that case; that is, such contract, if not within the exceptions stated above, would be valid under the laws of this State. This assumes that all parties concerned are sui juris. In the event that the students should be minors, written approval of the parent or guardian would be necessary.

If the frequency of such transportation or other circumstances, including the cost, would warrant it, the simplest protection would be an appropriate insurance policy.

December 27, 1949—049-610.

LICENSE FEES—PRIVATE TRAVEL VEHICLE—HOUSE CAR—
§320.08 F. S. '41

QUESTION: Into what classification does a motor vehicle, designed and used for private travel purposes, fall when equipped with such appliances as are fitted for living purposes?

To: *Honorable Arch Livingston, Motor Vehicle Commissioner:*

.....
Motor vehicle regulations, 1948, rule 3 (b), classifies a vehicle such as that described as a house car and places it in the classification "Automobiles—For Private Use." This appears under the law to be the proper classification for the vehicle described. It does not come within the definition of a truck.

January 19, 1950—050-25.

HOUSE TRAILER—TAXATION OF TRAILER—EXEMPTION—
§320.01, F. S. '41

QUESTIONS: 1. When are house trailers having their situs or location in this state subject to our motor vehicle registration statutes?

2. Where a house trailer having its situs or location in this state, does not bear a current year's Florida license tag thereon, is it subject to ad valorem taxation?

3. Where a house trailer has been permanently attached to real property in this state and is used as the permanent home of the owner of the said real property, should it be exempted from taxation under Section 7, article X, of the State Constitution?

To: *Hon. I. E. Scott, Tax Assessor, Glades County:*

.....
In the light of these observations a house trailer, having its situs or location in this state, is subject to our motor vehicle statutes when used or intended to be used in connection with a motor vehicle, the motive power of the motor vehicle being used as the motive power of the said trailer. This answers the first question.

Each automobile trailer that does not have a current year's Florida License tag thereupon (Section 200.45, Florida Statutes), or a current year's license tag issued by some other state or county duly recognized in this state, thereon, or is not within the purview of Section 320.01, Florida Statutes, and *Pool v. Travelers Insurance Company*, supra, and *Wood v. Club Transportation Service*, supra, is subject to ad valorem taxes, unless exempted by the constitution or by statute. These observations seem to answer the second question in the affirmative, unless it comes within an exemption from taxation allowed by law, or is permanently attached to real property so as to become a part thereof.

If a house trailer has been so permanently attached to real property so as to become a part thereof (for example if set upon piers as a house) and the owner thereof (of both the trailer and the real property) makes the same his permanent home, within the purview

of Section 7, Article X, of the State Constitution, the same would be entitled to exemption under said Section 7, Article X, of the State Constitution. One of the main questions in this connection is whether the trailer has been permanently, not temporarily, attached to the real property so as to become a part thereof. The third question, subject to the above qualifications, is answered in the affirmative.

February 8, 1950—050-68.

**EXEMPT TAGS—NON-PROFIT ORGANIZATIONS—BOY SCOUTS—
CHARITABLE OR CIVIC GROUPS—SECTION 320.10, F. S. '41**

QUESTION: Is the Motor Vehicle Commissioner authorized under the law to issue series X number plates at the exemption rate upon application of non-profit organizations such as YMCA, Human Society, American Legion, sponsored activities and other similar organizations owning and operating motor vehicles solely in charitable and civic activities without compensation?

To: Honorable Arch Livingston, Motor Vehicle Commissioner:

.....
..... The question is accordingly answered in the negative.

February 15, 1950—050-77.

**PERMANENT RESIDENTS—EXEMPTIONS—NONRESIDENT—
SEC. 320.23, 320.37, 320.38, F. S. '41**

QUESTION: Should a person claiming homestead exemption from taxation be required to purchase a motor vehicle license tag in this state?

To: Honorable Fuller Warren, Governor:

.....
It appears from the above and foregoing authorities that only *permanent residents* of this state (which term should, however, be distinguished from the terms domicile and citizenship) are entitled to homestead exemptions from taxation in this state.

From the above and foregoing authorities and observations it appears that the above question should be answered in the affirmative as a general rule, although it may be possible that there might be exceptions thereto. Under the circumstances mentioned in your inquiry we feel that the person in question must be either a resident of this state or a nonresident and that she would not be entitled to both homestead exemption from taxation and the right to operate a motor vehicle in this state as a nonresident.

March 23, 1950—050-144.

**MOTOR VEHICLES—EXTRA EQUIPMENT—DEVICES MOUNTED
ON—NOT SUBJECT TO TANGIBLE PERSONAL
PROPERTY TAX**

QUESTION: Are extra equipment and devices, such as lifting equipment, draglines, and other special devices, not necessary or proper for the operation of a motor vehicle upon the highways of this state, a part of the said motor vehicle and not subject to an assessment as tangible personal property?

To: *Honorable C. M. Gay, State Comptroller:*

..... Doubtless, tanks used on motor vehicles in connection with the transportation of oil, gas and other liquids, refrigeration equipment used in connection with the transportation of ice cream and other frozen products and other items of merchandise required to be kept at a low temperature, equipment placed upon motor vehicles by motor vehicle repairmen and garagemen for the purpose of transporting disabled motor vehicles over the highways, roads and streets, and many other similar items of equipment, should be considered as a part of the motor vehicle. This is true because the motor vehicle is used for the primary purpose of transportation and the use of the equipment is secondary thereto.

On the other hand there are many types of machines and equipment that are bolted or otherwise secured to motor vehicles (for example well drilling machinery); whose use is the primary purpose, while the motor vehicle is merely used for the transportation of the said machines and equipment from place to place, which is the secondary purpose. The machinery and equipment is not used in connection with the transportation of persons and things over the highways, streets and roads, but is used for some other primary purpose; while the motor vehicle is used for the purpose of transporting such machinery and equipment, which is a necessary but secondary purpose. This type of machinery and equipment should not be considered as a part of the motor vehicle.

..... These observations and authorities seem to answer the above question in the negative, conditioned, however, as above pointed out.

April 18, 1950—050-198.

STATE OF GEORGIA—RECIPROCAL AGREEMENT—PETROLEUM
CARRIER CORPORATION—MILEAGE TAXES—EXEMPT
FROM §320.39, FLORIDA STATUTES

QUESTION: Where a Florida corporation engaged in the transportation of motor fuels establishes an agency or branch office in the State of Georgia from which motor fuels are transported to purchasers in the State of Florida, by motor vehicle registered in the State of Georgia, are such motor vehicles subject to a mileage tax in this state in the light of the reciprocal agreement entered into between the States of Florida and Georgia on February 4, 1942?

To: *Honorable C. M. Gay, State Comptroller:*

..... In the light of the above observations, if residents and places of business in this state are permitted to operate their motor vehicles under similar circumstances in the State of Georgia without the payment of the tax in question or a like or similar tax, the above question should be answered in the negative.

June 23, 1950—050-307.

MOTOR VEHICLES—SECOND HAND DEALERS' LICENSES—COM-
MERCIAL TRAILERS—§320.27, FLORIDA STATUTES
APPLICABLE

QUESTION: Are dealers engaged in the business of buying, selling and dealing in used commercial trailers amenable to the provisions

of Section 320.27, Florida Statutes, governing dealers in used motor vehicles?

To: *Honorable Arch Livingston, Motor Vehicle Commissioner:*

..... the above question should be answered in the affirmative.)

August 24, 1950—050-416.

**MOTOR VEHICLES—FARM TRACTORS—TRAILERS—REGISTRATION—LICENSES—EXEMPTIONS—CHAPTER 320,
FLORIDA STATUTES**

QUESTION: Is a farm equipment trailer carrier owned by a Soil Conservation District of the State of Florida, used solely for the transportation of farm machinery from farm to farm, for the purpose of demonstration, subject to registration and license provisions of Chapter 320, Florida Statutes?

To: *Honorable A. David Baillie, Jr., Secretary, Marion Soil Conservation, Ocala, Florida:*

.....
The question is accordingly answered in the negative.

September 1, 1950—050-429.

**U. S. MAIL—TRANSPORTATION—PRIVATELY OWNED MOTOR TRUCK—FOR HIRE TAG—§320.17, FLORIDA
STATUTES APPLICABLE**

QUESTION: What type of motor vehicle license plate is required for a privately owned motor truck, which is used exclusively by the owner to transport United States mail between Post Office and Railway Station?

To: *Honorable Arch Livingston, Motor Vehicle Commissioner:*

.....
My predecessor in office in an opinion No. 041-283, Biennial Report, 1941-42, page 393, held that a private contract carrier holding a contract with the Federal Government for the transportation of mail for compensation may properly be required to secure a "for hire" license for such vehicle. In the light of that opinion and the cases heretofore cited, I am of the opinion that the owner of the motor truck in question meets all of the qualifications of the one class above referred to—that is to say he is the owner of the truck, he is not the owner of the freight, and his motor truck, therefore, comes within the "for hire" classification.

November 1, 1950.—050-512.

**COUNTY COMMISSIONERS NOT OBLIGATED—OFFICE SUPPLIES FOR TAX COLLECTOR—MOTOR
VEHICLE TAGS—SUMTER COUNTY**

QUESTION: Is the Board of County Commissioners for Sumter County, Florida, obligated for the payment of office supplies used by the County Tax Collector in connection with the sale of motor vehicle license tags?

To: *Honorable C. Burton Marsh, Clerk Circuit Court, Sumter County, Bushnell, Florida:*

.....

We find no statute directing or expressly authorizing Boards of County Commissioners to purchase and furnish office supplies for a Tax Collector to be used in his capacity as State Agent for the sale of motor vehicle licenses; except in so far as the same might be purchased from excess fees of the Tax Collector's office under Section 145.05, Florida Statutes.

.....

The above question is, therefore, answered in the negative, except in so far as the Board of County Commissioners may elect to use a part of the excess fees, if any, for such purpose.

HIGHWAY PATROL

February 3, 1949—049-46.

ROAD NO. 16—EXCLUDED FROM JURISDICTION—WITHIN NAVY RESERVATION

QUESTION: To what extent does the jurisdiction of the Florida Highway Patrol extend over that portion of State Road No. 16 (old 48) which lies within the limits of the United States Naval Base at Green Cove Springs, Florida?

To: *Honorable H. N. Kirkman, Director, Department of Public Safety, Tallahassee, Florida:*

..... the legal title to the lands lying within the territorial limits of the United States Naval Station located at Green Cove Springs, Florida, is vested in United States of America. That by instrument of cession dated December 17, 1940, the Governor of the State of Florida ceded exclusive jurisdiction over the lands in question, subject to an easement for the right-of-way for State Road No. 48 as now constructed and established, to the United States, reserving only the authority of the State of Florida to execute and serve process, civil and criminal, within the area.

.....

Since the members of the Highway Patrol are not authorized to serve warrants, summons or citation, the effect of the instrument of cession is to preclude the members of the Highway Patrol from the exercise of any jurisdiction over that part of the highway within the limits of the reservation.

April 13, 1949—049-166.

DEPARTMENT PUBLIC SAFETY—AUTHORITY TO CONSTRUCT HOUSING FACILITIES FOR EMPLOYEES AND MEMBERS HIGHWAY PATROL

QUESTION: Under existing statutes, is the Department authorized to enter into an agreement with the Florida State Improvement Commission for the construction of dwelling houses throughout the state to be occupied by members of the Florida Highway Patrol, the cost of which shall be paid over a period of years from a fund created

by rental charges paid by the occupants until the cost of construction is liquidated?

To: *Honorable H. N. Kirkman, Director, Department of Public Safety, Tallahassee, Florida:*

.....
 The question is accordingly answered in the affirmative.

June 30, 1949—049-285.

**STATE HIGHWAY PATROLMEN—ARRESTS—DELIVERED TO
 SHERIFFS—LEGISLATURE—POWER TO ABOLISH
 JUSTICE DISTRICTS—REFERENDUM**

QUESTIONS: 1. May state highway patrolmen carry persons arrested by them before the justice of the peace in whose district such arrest was made?

2. Does the legislature have authority within itself to abolish the office of justice of the peace or must the enactment to abolish be submitted to a referendum of the electors of the county?

To: *Honorable D. C. Suggs, Justice of the Peace, Millville, Florida:*

The answer to your first question seems to be included in Section 321.05 (4), Florida Statutes. This seems to answer your first question in the negative.

Section 21, Article V, of the State Constitution, as amended in 1944, concerning justice districts, provides that the legislature may, by special act, from time to time . . . establish new or abolish any such districts now or hereafter existing. Provided, however, that any such change shall be submitted to the people of the county so affected, by referendum at the next general election. This seems to answer your second question.

July 18, 1950—050-341.

**HIGHWAY PATROLMEN—CONSTABLE ASSISTING WITH ARREST
 NOT ENTITLED FEES—VIII, 6, FLORIDA CONSTITUTION**

QUESTIONS: 1. When a Florida Highway Patrolman makes an arrest, is the Constable who was riding in the Highway Patrol car with said Patrolman and assists in making said arrest, entitled to statutory fee for arrest?

2. Can a Constable of District #1, Franklin County, be appointed to fill unexpired term of deceased Constable of District #2 of said County?

To: *Honorable Robert H. Ray, Constable, Franklin County, Apalachicola, Florida:*

.....
 Your first question, therefore, is answered in the negative.

.....
 Therefore, the answer to your second question is in the negative.

DRIVERS' LICENSES

July 2, 1949—049-299.

COUNTY JUDGES—ONLY ENTITLED FEES ON DRIVERS' LICENSES ISSUED BY HIM

QUESTIONS: 1. Are the County Judges of the several counties entitled to statutory fees provided for the issuance of motor vehicle drivers' licenses in instances where licenses have been issued directly by the Department of Public Safety?

2. If the answer to the first question is in the affirmative, what is the proper legal remedy for a County Judge to collect such fees from the Department?

To: Honorable James C. Gwynn, County Judge, Leon County, Tallahassee, Florida:

..... Hence, the first question is answered in the negative.

2. The foregoing answer disposes of the second question.

The letter of this office dated June 16, 1949, addressed to the above County Judge and concerning the subject matter here dealt with, is superseded by this opinion; and the legal conclusions set forth in said letter which are in conflict herewith are hereby withdrawn.

July 6, 1949—049-302.

SUSPENDED—INVALID—VIOLATION—SECTIONS 322.03, 322.39,
F. S. '41

QUESTION: Is it a breach of the criminal laws of this state for one to drive a motor vehicle within this state after his driver's license has been suspended pursuant to Section 324.04(2), Florida Statutes?

To: Honorable Henry C. Hamilton, County Prosecuting Attorney, Monticello, Florida:

.....

Summarizing, a driver whose license has been suspended has no "valid license" (Section 322.03) and therefore, violates the provisions of the chapter, which is made a misdemeanor by Section 322.39.

Therefore, your question requires an affirmative answer.

June 23, 1948—049-280.

DEPARTMENT OF PUBLIC SAFETY—REVOCATION OF LICENSE—
CONVICTED OF LARCENY

QUESTION: Is the driver's license of a motor vehicle operator subject to revocation under Section 322.26 (3), Florida Statutes, 1941, in a case where the operator is convicted of larceny of an automobile and no motor vehicle other than the stolen automobile is involved in the commission of the crime?

To: Honorable T. M. King, Supervisor, Department of Public Safety:

.....
The question is accordingly answered in the negative.

August 12, 1949—049-376.

DEPARTMENT OF PUBLIC SAFETY—MOTOR VEHICLES—OPER-
ATOR OF—PURPOSE OF EMPLOYMENT—CHAUFFEUR'S
LICENSE REQUIRED

QUESTION: Where the operation of a motor vehicle owned by another is essential in the performance of the operator's duties for which he is employed, can the Department of Public Safety require said operator to purchase a chauffeur's license?

To: *Mr. T. M. King, Jr., Supervisor, Drivers' License Division, Department of Public Safety:*

.....

In all cases where the operation of a motor vehicle is the principal purpose of the employment and other duties in connection therewith are incidental, the employee would come within the statutory definition of a chauffeur.

The statutory definition would not necessarily include instances where the use and operation of a motor vehicle is merely incidental to the performance of the principal duties imposed upon the employee, such as the solicitation of orders; the collection of accounts; or for other purposes where the use of the vehicle is merely a convenience to the employee in the discharge of the duties of his employment. If, however, the duties of the employee are such that they can not be assumed without the use and operation of a motor vehicle, the operation of the motor vehicle will constitute the principal purpose of the employment and such employee would be required to qualify and secure a license as a chauffeur.

August 25, 1949—049-398.

VALID—PRODUCED IN COURT—NO CONVICTION—§322.15,
FLORIDA STATUTES

QUESTIONS: 1. Where a defendant is charged with the operation of a motor vehicle without a proper operator's or chauffeur's license in his immediate possession, may he be fined or have costs assessed against him when he produces such a license at the trial?

2. Is there a penalty for operating a motor vehicle without a proper operator's or chauffeur's license in one's immediate possession?

To: *Honorable Monroe W. Treiman, County Judge, Brooksville, Florida:*

..... Under the above proviso no person charged with violating the section may be convicted if he produces a valid license in court issued prior to the date he is charged with operating a motor vehicle without a valid license in his possession.

..... The first question must, therefore, be answered in the negative.

..... There is such a penalty as that mentioned in the second question but it may be defeated by the production of the license in court in accordance with said Section 322.15.

August 30, 1949—049-412.

DEPARTMENT PUBLIC SAFETY—DRIVERS' LICENSE—CHAUFF-
FEURS' LICENSE—QUALIFICATION REQUIREMENTS—
CHAPTER 322, F. S. '41

QUESTIONS: 1. Under what conditions and circumstances is the Department of Public Safety, Division of State Motor Vehicle Drivers License, authorized to issue a special chauffeur's license?

2. Under what conditions and circumstances may a chauffeur's license be issued to a person under the age of eighteen years?

To: Honorable H. N. Kirkman, Director, Department of Public Safety:
.....

Answering your first question, I am of the opinion that you should require applicants for a special chauffeur's license to be at least eighteen years of age, except school bus drivers who under regulations of the state board of education, in accordance with Section 234.14, may qualify for this license if they are seventeen years of age or more and meet certain other standards promulgated by the state board of education.

I am of the further opinion that before you are authorized to issue a special chauffeur's license to an applicant he must have had one year's driving experience as a chauffeur and file a certificate with the department of public safety showing such employment as a chauffeur and have certain other additional qualifications as provided by subsections 2, 3 and 4 of Section 322.06, F.S.

..... Under the provisions of Section 322.05 a chauffeur's license may be issued to a person who has attained the age of sixteen years, and has not reached the age of eighteen years, only when such person has met the requirements, and complied with the provisions of Section 322.09, Florida Statutes 1941, governing the issuing of an operator's license to a minor.

September 30, 1949—049-464.

VIOLATIONS—PENALTY—SUSPENSION OR REVOCATION—
POLICE OFFICERS—AUTHORITY TO PICK UP BUT
NOT HOLD

QUESTIONS: 1. Does a police officer have the authority to pick up the driver's license of a minor who has violated a city ordinance or the restrictions imposed by the Department of Public Safety?

2. Does a police officer have the authority to pick up a driver's license and treat it as being in the nature of a bond until the licensee returns to court, or does he have the authority to pick up a license for any cause before the licensee is convicted?

To: Honorable H. N. Kirkman, Director, Department of Public Safety:

..... there is no provision of the law which would justify a police officer in commandeering the driver's license of a person accused of the violation of a law, and treated to be held as if it were a bond to insure the appearance of the operator for trial before

an appropriate court. The law authorizing an arrest officer to accept a bond insurance appearance of the accused before the proper court for further proceedings contemplates a monetary bond, that is a bond supported by money or its equivalent in security.

It is my opinion that a police officer on making an arrest of a person operating a motor vehicle for commission of an offense may, in cases where deemed necessary, pick up and hold such person's license during the time such person is held in custody or for investigation, but such license shall be restored to such person immediately thereafter when released on bail or otherwise pending trial. Except as noted above, in no case can the holder of a legal driver's license be deprived thereof, until he is convicted of an offense for the commission of which the statute imposes the penalty of suspension or revocation.

September 29, 1949—049-470.

**MUNICIPALITIES—NO AUTHORITY TO COLLECT FEE OR HOLD
DRIVER'S LICENSE OF TAXI-CAB DRIVER—BARTOW,
CITY OF—§322.41 F. S. A.**

QUESTION: Can the City of Bartow require a taxi-cab driver to make application to the city commission for a driver's certificate in view of Section 322.41 F. S. A.?

To: Honorable M. J. Wilson, City Attorney, Bartow, Florida:

Section 322.41, F. S. A., states:

"No city, municipality or town shall impose or collect any license for the operation of any motor vehicle or any driver thereof."

I am of the opinion that the above quoted statute prohibits any city or town from imposing or collecting a *license fee*, but is not intended to prevent a city or town from enacting a regulatory ordinance that would require taxi-drivers to be finger-printed and investigated for moral fitness and physical ability. See 5 Am. Jur. 563 Section 79, 37 Am. Jur. 535 Section 22, and 37 Am. Jur. 548 Section 45; also State ex rel Nelson v. Quigg, Chief of Police, 196 So. 417, 143 Fla. 227.

October 10, 1949—049-486.

**MOTOR VEHICLE OPERATOR—DRIVER'S LICENSE—PRIVILEGE
REVOKED—MISDEMEANOR TO DRIVE WITHOUT
LICENSE DURING PERIOD SUSPENSION**

QUESTION: "Where a person who has never possessed a chauffeur's or operator's license, but has had his privilege of purchasing such license revoked by reason of a conviction of driving while intoxicated, may he be charged with the offense of driving while license revoked if he drives during the period in which his driving privileges are suspended?"

To: Honorable Monroe W. Treiman, County Judge, Hernando County, Brooksville, Florida:

.....
The question, therefore, is answered in the affirmative.

November 17, 1949—049-551.

**MUNICIPAL COURTS—JUDGES—REVOKE OR SUSPEND STATE
DRIVERS' LICENSES—CHAPTER 322, F. S. '41 APPLICABLE**

QUESTION: Is the authority of the judges of municipal courts in this state to suspend or revoke state motor vehicle drivers' and chauffeurs' licenses limited to the express authority granted by Chapter 322, Florida Statutes, or may they revoke or suspend for causes not expressly mentioned in said statutes?

To: Department of Public Safety, Drivers' License Division:

... When Sections 322.25, 322.26 and 322.27, Florida Statutes, are read together we feel that they authorize municipal judges to cancel state drivers' and chauffeurs' licenses for the causes mentioned in the statutes.

The fact that the drivers' and chauffeurs' licenses in question are issued by the state, and not under any municipal authority, would seem to limit the authority of a municipal court or judge to the authority or grounds mentioned in the state statute.

July 24, 1950—050-357.

**COUNTY PRISONER DRIVING COUNTY VEHICLE WHILE LICENSE
REVOKED—§§322.01(10), 322.34, FLORIDA STATUTES**

QUESTION: Where a county prisoner is serving a sentence for the offense of driving while drunk, may he lawfully operate a motor vehicle without driver's license when such operation is confined to the performance of labor pursuant to his sentence?

To: Honorable Thomas J. Shave, Jr., County Attorney, Fernandina, Florida:

...
Hence, the question is answered in the negative.

October 11, 1950—050-487.

**DRIVERS' LICENSES—EXPIRATION DATE—OCTOBER FIRST
EACH YEAR—SECTION 322.18, FLORIDA STATUTES**

QUESTION: What is the expiration date of the 1950 driver's license?

To: Hon. Harold S. Smith, County Prosecuting Attorney, Collier County, Everglades, Florida:

Section 322.18, Florida Statutes, on expiration of licenses, provides, in part: "Every operator's or chauffeur's license shall expire October first each year."

Thus, the answer to your question seems to be that the 1950 driver's license expires at midnight on the first day of October, 1950.

AUTO TRANSPORTATION COMPANIES

January 19, 1949—049-19.

FLORIDA CITRUS COMMISSION—REGULATION ON SHIPMENT OF GIFT BOXES OF CITRUS FRUIT

QUESTION: Whether the Florida Citrus Commission has authority to approve the shipment of gift boxes of citrus fruit by motor truck express or air line?

To: Mr. W. P. Allen, Attorney, Florida Citrus Commission, Bartow, Florida.

.....

The question, therefore, must be answered in the affirmative, provided that the motor truck express or air line contemplated is duly authorized by a certificate of public convenience and necessity as an express business by the properly constituted authority, whether State or Federal.

August 19, 1949—049-391.

SURETY BOND—MOTOR VEHICLE LIABILITY POLICY—ISSUANCE BY AUTHORIZED INSURANCE COMPANY REQUIRED

QUESTIONS: (1) May the surety bond or insurance coverage in lieu thereof, prescribed by Section 236.06, Florida Statutes, and required of an auto transportation company which has been granted a permit by the Florida Railroad and Public Utilities Commission as contemplated by Section 323.05, Florida Statutes, as amended, be issued by an insurer not admitted to engage in the insurance business in Florida in pursuance of the provisions of Chapter 25414, Laws of Florida, Acts of 1949, provided such surety bond or insurance contract is issued in strict pursuance of the conditions set forth in Section 5 of said chapter?

(2) May the owner of a motor vehicle in Florida, who in pursuance of the provisions of Chapter 25050, Laws of Florida, Acts of 1949, is required to furnish to the Insurance Commissioner evidence of financial responsibility as contemplated by said act, meet such requirement by furnishing evidence to the Commissioner that he holds a motor vehicle liability policy in the amount and conditioned as required by said law, issued by an insurer not admitted to engage in business in this state and in pursuance of the provisions of Chapter 25414, Laws of Florida, Acts of 1949, provided such policy is issued in strict pursuance of the conditions set forth in Section 5 of said Chapter 25414?

To: Honorable J. Edwin Larson, Insurance Commissioner.

.....

In view of the foregoing, in my opinion the above questions properly are answered as follows:

The surety bond, or in lieu thereof, the insurance contract, required of auto transportation companies as set forth in Section 236.06, Florida Statutes, and the motor vehicle liability policy to be furnished by the owner of a motor vehicle in Florida in pursuance of

the provisions of Chapter 25050, must be issued by an insurance company "authorized to do business" in this state as such quoted words are explained above.

FINANCIAL RESPONSIBILITY

August 25, 1949—049-405.

SUSPENDED DRIVERS' LICENSE—FAILURE TO DELIVER TO INSURANCE COMMISSIONER—SUBJECT TO PROSECUTION

QUESTIONS: 1. If a person, under the circumstances set forth in Section 15 of Chapter 25050, Laws of Florida, Acts of 1949, is required to return his driver's license to the Insurance Commissioner, what procedure should be followed by the Commissioner if such person fails to return said license?

2. If, under the factual situation presented by the first question, the Insurance Commissioner shall direct a peace officer in this state to secure possession of such driver's license and return same to the Commissioner, can costs be levied against and collected from the person from whom such license is so obtained?

To: *Honorable J. Edwin Larson, Insurance Commissioner:*

.....

In view of the foregoing, in my opinion the above questions properly are answered in their numbered order as follows:

(1) When a peace officer, in pursuance of the direction of the Insurance Commissioner and under the circumstances contemplated by Section 15 of Chapter 25050, makes demand upon a person for return of his driver's license, and such person refuses to voluntarily surrender the same, the peace officer has exhausted his legal right to proceed further to acquire possession of such license by virtue of the Commissioner's direction. It is quite likely that possession of such license might be obtained by the Commissioner in a proper court proceeding; but such would be so cumbersome and impractical that the point is not labored here.

(2) Under the circumstances contemplated by this question, when a peace officer, in pursuance of directions of the Insurance Commissioner, obtains possession, or attempts to obtain possession, of a driver's license from a person who has failed to surrender same, a civil obligation or account to the amount of the peace officer's actual expenses so incurred results by operation of law, owing from such person to such officer. It is similar to and collectible in same manner as any other account.

It is to be noted that the failure of a person to deliver his driver's license voluntarily to the Insurance Commissioner under the circumstances contemplated by the first question, may subject him to the risk of prosecution under Section 16 of the act. Such a person, however, could not be prosecuted for failure to pay the costs provided in Section 15 and dealt with in the second question.

December 28, 1949—049-612.

**SUSPENSION OF LICENSES—CRIMINAL LIABILITY—DRIVING
WITHOUT LICENSE—§324.04, FLORIDA STATUTES, 1941**

(See: Opinion 049-302)

QUESTION: Is it a breach of the criminal law of this state for a resident of this state to drive a motor vehicle in this state when his driver's license has been suspended pursuant to Section 4(b) of Chapter 25050, Laws of Florida, Acts of 1949?

To: Honorable J. Edwin Larson, Insurance Commissioner:

.....

On July 6, 1949, by opinion of this office No. 049-302, it was held that where a driver's license had been suspended by the Commissioner in pursuance of Section 324.04(2), if during the period of such suspension the person to whom said license had been issued operated a motor vehicle within this state, he violated Section 322.03, Florida Statutes, and subjected himself to the penalties set forth in Section 322.39, Florida Statutes.

By the same reasoning employed in such former opinion, a resident whose driver's license has been suspended pursuant to Section 4(b) of Chapter 25050 and who during such period of suspension operated a motor vehicle within this state, violates the provisions of Section 322.03 and is subject to the penalties set forth in Section 322.39. This is true even though such person whose license has been suspended has not returned said license to the Insurance Commissioner as required by Section 15 of Chapter 25050.

June 16, 1950—050-298—050-336.

**FINANCIAL RESPONSIBILITY LAW—RELEASE FROM LIABILITY—
SUBSECTION 324.04, (2), (f), FLORIDA STATUTES**

QUESTION: When a person who carries collision insurance on his motor vehicle executes to the operator of another motor vehicle a release from liability for damages to the former's vehicle, does such constitute a "release from liability" within the meaning of such words as they are used in said subsection 324.04 (2)(f), Florida Statutes, 1949:

(1) If such release is executed and delivered prior to payment to said insured person by his insurer of an amount to cover damages so sustained?

(2) If such release is executed and delivered subsequent to the payment by the insurer to the insured of said amount for damages?

To: Honorable J. Edwin Larson, Insurance Commissioner:

.....

..... It is to be noted, further that an insurer's common law right of subrogation may be waived by an insurance contract (Fire Association of Philadelphia v. Schellenger (N.J.) 94 A. 615, reversing 90 A. 240); however, it would seem that such a provision in a policy of the type here considered would be most unusual, and for the purposes of this opinion it is assumed that no such waiver appears in the contracts here discussed.

In view of the foregoing, in my opinion the above questions are answered as follows:

(1) If the insured executes the release of liability in the form and manner provided by subsection 324.04 (2)(f) prior to the time of receipt from his insured of an amount for damage to his motor vehicle in pursuance of the contract of insurance, all as contemplated by this question, such release is valid and should be recognized by the Insurance Commissioner as in conformity with the requirements of this subsection. It is however remarked without further comment that normally the execution and delivery of such a release by an insured under the stated circumstances could constitute a rather reckless act.

(2) If such a release is executed and delivered by an insured subsequent to receipt by the insured from his insurer of an amount for damage to his motor vehicle in pursuance of the contract of insurance, all as contemplated by this question, such would not constitute a release of liability within the purview of subsection 324.04(2)(f). Upon acceptance by an insured of the proceeds of such policy, the insured loses his right to release anyone of liability for damages sustained by him to the extent of the insurance coverage received, the insurer being subrogated to all rights which may be possessed by the insured against a third party for damage occasioned to the insured's motor vehicle.

Note: See also opinion No. 050-336.

June 11, 1950—050-336—050-298.

FINANCIAL RESPONSIBILITY LAW—LIABILITY—RELEASE— SUPPLEMENT TO OPINION NUMBER 050-298

QUESTION: When a person carrying collision insurance on his motor vehicle executes to the operator of another motor vehicle a release from liability for damages to the former's vehicle, but containing a provision excepting from the release so executed those matters set forth below in this opinion, and such release is executed prior to payment to the insured person by his insurer of an amount to cover damages so sustained to the extent of the policy coverage, does such constitute a "release from liability" within the meaning of such words as they are used in said subsection 324.04 (2)(f), Florida Statutes, 1949?

To: Honorable J. Edwin Larson, Insurance Commissioner:

This opinion supplements our former opinion to the above state official dated June 16, 1950, No. 050-298, copy of which is attached hereto. Reference is made to such opinion and to the matter therein set forth in order to avoid needless repetition herein.

The form of release from liability contemplated by the question contains the following paragraph:

"PROVIDED HOWEVER, that there is excepted from this release any rights of (named insurance company) under policy dated February 9, 1950 and of (named insurance company) under policy dated February 9, 1950, issued in my favor to

subrogation as to any claims growing out of said accident provided for under the terms of said insurance policy."

In opinion 050-298 it was held in effect that if the insured executes a release of liability, without the conditional features reflected in the above quoted proviso, and in the form and manner provided by subsection 324.04(2)(f), prior to the time of receipt from his insured of an amount for damages to his motor vehicle in pursuance of the contract for insurance, such release is valid and should be recognized by the Insurance Commissioner as in conformity with the requirements of this subsection. It was further held in said former opinion, in substance, that if such a release is executed subsequent to receipt by the insured from his insurer of any amount for damages to his motor vehicle in pursuance of the contract of insurance, such would not constitute a release of liability within the purview of subsection 324.04(2)(f); the reason for such conclusion being that upon acceptance by the insured of the proceeds of the policy, the insured loses his right to release anyone of liability for damages sustained by him to the extent of the insurance coverage received the insurer being subrogated to all rights which may be possessed by the insured against the third party causing damage to the insured's motor vehicle.

If an insured, prior to receipt from his insurer of the amount of damages established with respect to his motor vehicle to the extent of the policy coverage, should execute a release in the form and with the proviso contemplated by this question, and subsequent thereto the insurer should pay to the insured the amount of damages so established and in pursuance of the provisions of the policy, the insurer would be subrogated to the rights of the insured as against the person causing the damage only to the extent that the person causing the damage had not prior thereto made payment to the insured of the amount of damage sustained by the latter; and this is true regardless of the amount which the insurer may have paid the insured.

If such a release with the described proviso is executed and delivered by an insured prior to receipt by him from the insurer of the amount of damages sustained to the extent of the policy coverage, the insurer would be subrogated to the rights of the insured against the person causing the damage only to the extent that such person has not paid the full amount of damages established as sustained by the insured, regardless of the amount which an insurer may have paid the insured. When such a release is received by the Insurance Commissioner purportedly in pursuance of the provisions of subsection 324.04(2)(f), he should ascertain if the person causing the damage has paid all of the damages established as sustained by the insured; and if such is the case, the release of liability may be accepted as meeting the full requirements of said subsection. If all the damages so established have not been paid by the person causing the damage, then to the extent of the difference between the damages established and the amount so paid, the insurance company is subrogated, but in a sum not in excess of that paid by it to the insured; and if such is the case, such release with the proviso will not constitute a release of liability within the purview of subsection 324.04(2)(f).

August 18, 1950—050-406.

AUTOMOBILE RESPONSIBILITY LAW—GOVERNMENT EMPLOYEES—REVOCATION DRIVER'S LICENSES—SECTIONS 324.04, 324.04 (2) (c), FLORIDA STATUTES

QUESTION: Is a person who has been involved in a motor vehicle accident and found to be at fault in regard thereto, and has had his driver's license suspended in pursuance of the Automobile Financial Responsibility Law, authorized to operate a motor vehicle upon the highways of this state under the following circumstances:

- (a) If the vehicle he drives is owned by the Federal Government and his operation thereof is in pursuance of his employment with the Government?
- (b) If he is an employee of the Federal Government and drives his own motor vehicle in connection with his duties performed pursuant to his employment?

To: Honorable J. Edwin Larson, State Treasurer:

.....
..... The Supreme Court of the United States has held that an employee of the Federal Government whose employment necessitates his operating a motor vehicle owned by the United States may not be required to secure a motor vehicle driver's license for the privilege of engaging in the duties of his employment, and in the light of that decision the first division of your question is answered in the affirmative; with the qualification, however, that such exemption would not apply to the operation by such government employee of any other vehicle not owned by the United States.

.....
..... The second division of your question is accordingly answered in the negative.

CHAPTER XXI

AERONAUTICS

LICENSING AIRCRAFT AND PILOTS

July 24, 1950—050-361.

AIRCRAFT REGISTRATION FEES—MILEAGE TAX REFUNDS— PROVIDED IN §330.13, FLORIDA STATUTES

QUESTION: Where a corporation owns a large number of aircraft engaged in interstate or foreign commerce, into and out of this State, registers its said aircraft with and pays the required registration fee to the Motor Vehicle Commissioner of this State, what disposition should be made of such fees in the light of the action of the State Budget Commission declaring said funds to be in the nature of trust funds?

To: Honorable C. M. Gay, State Comptroller:

.....

We, therefore, find no change in the statutes, or action taken by the Budget Commission, changing the views of this office as expressed in our opinion to the Florida State Improvement Commission, under date of April 28, 1949 (1947-8 Biennial Report 396). We still adhere to our answer to the sixth question as stated in said opinion. We feel that the fund in question should continue to be held for the action of a future legislature.

CHAPTER XXII

HIGHWAYS, BRIDGES AND FERRIES

STATE ROADS

August 11, 1949—049-393.

STATE ROAD DEPARTMENT—AUTHORIZED GRANT PERMISSION—PRIVATE CORPORATION FURNISH WATER SUPPLY TO PUBLIC—LIMITATION

QUESTION: Upon application by a corporation for permit to construct and maintain water mains, hydrants and necessary appurtenances upon and along a state road, to which the state owns the fee simple title, for the purpose of furnishing water supply and service to the public, does the fact that the service may be limited to some extent, because of capacity of applicants' works or the area to be served, operate to prohibit the State Road Department from granting the permit?

To: Honorable Robert O. Ghiotto, Secretary, State Road Department:

.....

The question is accordingly answered negatively.

This conclusion makes it unnecessary to consider the related question presented.

August 29, 1949—049-411.

BOARD COUNTY COMMISSIONERS—AUTHORIZED USE ROAD FUNDS REPAIRS CONSTRUCTION STATE ROADS THROUGH COUNTY

QUESTION: May the Board of County Commissioners of a county pay compensation in the sum of \$200.00 to the U. S. Highway 41 Association for services in promoting the repair and reconstruction of U. S. Highway 41 through the county with state and federal funds?

To: Honorable Thelma Lewis, Clerk Circuit Court, Jasper, Florida:

.....

In view of the above observations, your question is answered in the affirmative.

September 28, 1949—049-462.

CITIES AND TOWNS—AUTHORIZED INSTALL PARKING METERS ON STATE HIGHWAYS—CONNECTING LINK—WITHOUT CONSENT STATE ROAD DEPARTMENT

QUESTION: Is a city or incorporated town authorized to install parking meters upon a connecting link of a state road traversing such city or town without the consent of the State Road Department or the Federal Bureau of Roads?

To: Senator A. L. Wilson, Quincy, Florida:

..... The question is accordingly answered in the affirmative.

November 29, 1949—049-561.

STATE ROAD DEPARTMENT—SURVEY CENTERS—INFORMATION
BOOTHES—AUTHORITY UNDER CHAPTER 341,
FLORIDA STATUTES

QUESTIONS: 1. Does the state road department have authority to construct, maintain and operate survey centers of information booths located on the main highway at the entrance to the State of Florida?

2. Does the state road department have authority to furnish at the above survey centers or information booths daily wire service to trucks entering the state in search of agricultural products to be transported to northern markets?

To: Mr. Robert O. Ghiotto, Secretary, State Road Department:

..... It is my opinion that the answer to your first question is in the affirmative.

..... the answer to your second question is in the negative.

August 11, 1950—050-394.

STATE ROAD DEPARTMENT—"EQUIPMENT RENTAL AGREEMENTS"—NECESSITY TO ADVERTISE BIDS—§§341.14,
341.15, FLORIDA STATUTES APPLICABLE

QUESTION: Should the Comptroller honor requests for payment made upon vouchers received from the State Road Department covering rental agreements with private contractors for the use of road building machinery and equipment, when such contracts were not let on a competitive bidding basis under the provisions of Sections 341.14 and 341.15, Florida Statutes?

To: Honorable C. M. Gay, State Comptroller:

As you know, the legality of these so-called rental agreement contracts is presently the subject of litigation in the Circuit Court of Leon County. This office has filed, on behalf of the citizens and taxpayers of this state, a motion to intervene in this case for the express purpose of seeking to declare such contracts illegal and void, on the grounds that such agreements are contrary to and in violation of the express provisions of the statutes governing the powers and authority of the State Road Department.

..... Accordingly, it is my opinion that your office should not honor requisitions for payment on such contracts until such time as the case now pending in the Circuit Court is finally adjudicated. If, of course, the court should uphold the validity of these rental agreements, then payment would be proper at that time. However, it is my conviction that the policy of making such contracts will be

declared illegal because of the great weight of authority that cannot be ignored.

However, it is not the purpose of this office to seek to enrich the State unjustly at the cost of private individuals. In the litigation involving the A. F. Rich Company rental agreement, or in any other litigation which may be instituted involving these rental agreements, the ends of justice may be sufficiently served by a decree permanently enjoining the State Road Department from making any new rental agreements. The great objective is to put an end to the further continuance of this abuse and require the State Road Department hereafter to comply with the competitive bidding statutes. There is a question in my mind as to whether such contracts are void or voidable. It may be, if and when such contracts are declared illegal, that recovery can be had by the contractors involved on a quantum meruit basis. However, the exploration of such legal possibilities will be held in abeyance pending the decision of the courts on the case now in controversy. I believe you will agree that only pursuant to the authority of a court determination can you safely afford to proceed further in paying these vouchers.

September 8, 1950—050-437—050-394—050-388.

STATE ROAD DEPARTMENT—AUTOMOBILE PURCHASES—COMPETITIVE BIDDING—SECTION 341.15, FLORIDA STATUTES

QUESTION: Are purchases of automobiles by the State Road Department within the competitive bidding statutes (Section 341.15, Florida Statutes) when the value of such automobile exceed \$1000.00, but the actual money expended is less than that sum, due to trade-in allowances made on old cars of the Department?

To: Honorable C. M. Gay, State Comptroller:

.....

Therefore, it is my opinion that purchases by the State Road Department of automobiles to the value of \$1000.00 or more should be executed only after advertising for competitive bids as prescribed by the statute, even though part of the purchase price is paid by trading in an old automobile so that the cash involved is less than that sum.

However, this method of trading automobiles without advertising for bids has been in effect in the State Road Department for more than 18 years, and it is my belief that the dealers concerned, as well as the Department itself, entered into these contracts in good faith, relying on this long standing practice originally founded and continued on an erroneous administrative interpretation of the law. Hence, on the basis of the recent court decision in the equipment rental case, where existing rental agreements were permitted to be completed, I believe that it would be only just and equitable for the state to make payment for any automobiles already contracted for by the State Road Department, which were purchased without advertising, but in good faith, prior to the issuance of this opinion.

Your question is answered accordingly.

October 25, 1950.—050-502.

STATE ROAD DEPARTMENT—MARKINGS—TRAFFIC SIGNALS
INSTALLED BY MUNICIPALITIES §341.621 (4) (c),
FLORIDA STATUTES APPLICABLE

QUESTION: Where a highway, constructed at state expense with Federal contributions by virtue of the "Federal Aid Highway Act of 1944", extends through the territorial limits of a municipality of over 2,000 population, does the State Road Department under the authority of Section 341.621 (4) (c), Florida Statutes, 1949, have the power to regulate the placing of traffic signs and signals upon said highway, by the municipality?

To: Honorable Alfred A. McKethan, Chairman, State Road Department:

.....

The question is, therefore, answered in the affirmative.

October 30, 1950.—050-503.

AUDIT—BOOKS AND RECORDS OF STATE ROAD DEPARTMENT;
STATE AUDITING DEPARTMENT—AUTHORITY

QUESTIONS: 1. May the State Auditing Department employ accountants to assist it in the performance of its duties, in addition to the ten assistant state auditors provided for in and by Section 21.02, Florida Statutes?

2. May the State Auditing Department, for the purposes of making an audit of the books and records of the State Road Department, pursuant to Section 341.13, Florida Statutes, employ accounting firms, instead of individual accountants or auditors, to make such audit?

3. May the costs and expenses of making an audit by the State Auditing Department, pursuant to Section 341.13, Florida Statutes, of the books and records of the State Road Department, be paid from the funds of said State Road Department?

To: Honorable C. M. Gay, State Comptroller:

Additional Assistant State Auditors; auditors for the State Auditing Department.—The State Auditing Department of this State exists by virtue of Chapter 21, Florida Statutes, Sections 21.01 and 21.02 of which seem to provide for a State Auditor and ten assistant state auditors, each of whom is commissioned as a state officer. Under Section 21.10 of the said statutes, the Governor may, "if in his judgment it shall become necessary, employ not exceeding two expert and efficient accountants," in addition to the above mentioned state auditors and assistants, "to make a special audit of any state department, state . . . office, state institution, board or commission. Such additional or emergency auditors or accountants shall receive such compensation as shall be agreed on before the services are performed." Under the budget submitted to the Legislature at its 1949 regular session, by the State Budget Commission, and upon which the 1949 appropriations act was based, there was provision made for the payment of ten assistant state auditors (evidently those mentioned in the above statutes) and for

forty-seven "auditors." Under these statutes it would seem that authority is given to the State Auditing Department, or to the Governor, or both, for the appointing and commissioning of a State Auditor, ten assistant state auditors, and the employment of at least two expert or efficient accountants (employed by the Governor under Section 21.10, Florida Statutes) and forty-seven "auditors" for the said department (provided for by the 1949 appropriations act and the budget submitted to the Legislature of 1949). We are not advised as to the number of assistant state auditors and auditors (under the 1949 appropriations act) are now employed in the department. These observations answer the first of the above questions. The department may employ up to forty-seven accountants under the 1949 appropriations act during the biennium for which such appropriation was made. Other auditors may also be employed for county duty under Sections 21.13 et seq., Florida Statutes, but which statute is not here material.

..... In the light of these observations it is doubted that the State Auditing Department has any power or authority to contract with firms of auditors or accountants to make the audits required to be made by the State Auditing Department. The statute appears to require that the Auditing Department make an audit (not cause an audit to be made) of the books and records of the State Road Department (See Section 341.13, Florida Statutes). There is a distinction between *making an audit* and *causing an audit* to be made. These observations, in so far as they relate to and govern the action of the State Auditing Department, seem to answer the second question in the negative. Whether or not the Governor has the power and authority to cause an audit of the books and records of the State Road Department to be made, under his duty to "take care that the laws be faithfully executed" will be hereinafter considered.

..... In the light of these observations I do not think that obligations of the State Auditing Department may be paid from the funds of the State Road Department. This seems to answer the third question in the negative.

.....
October 30, 1950.—050-505.

STATE ROAD DEPARTMENT—EMPLOYEE AS ABSTRACT
COMPANY OWNER—CONTRACTS WITH—
§341.15, FLORIDA STATUTES

QUESTION: Is it a violation of Section 341.15, Florida Statutes, to contract with an abstract company for title abstract services when the principal owner of such company is an employee of the State Road Department?

To: Honorable Alfred A. McKethan, Chairman, State Road Department:

.....
Therefore, while there is some doubt as to the applicability of the criminal provisions of Section 341.15, it is my opinion that it would be contrary to public policy and the spirit of this statute for the Road Department to contract with an abstract and title company owned by one of its employees. Your question is answered accordingly.

November 27, 1950—050-537, 050-394, 050-437.

STATE ROAD DEPARTMENT—PURCHASING SUPPLIES AND
EQUIPMENT—§§341.14, 341.15, FLORIDA STATUTES
APPLICABLE

QUESTION: What, in general, are the requirements of, limitations on, applicable legal rules concerning, and exceptions to Sections 341.14 and 341.15, Florida Statutes, in so far as they pertain to the purchasing of "supplies and equipment" by the State Road Department?

To Honorable C. M. Gay, State Comptroller:

Sections 341.14 and 341.15, Florida Statutes, provide, in effect, that the State Road Department shall not purchase supplies or equipment to the value of \$1000 or more without advertising for bids on same at least once a week for not less than two consecutive weeks and thereafter any contract for the purchase of such supplies or equipment shall be awarded to the lowest responsible bidder.

Your letter and the accompanying memorandum from the Road Department set forth some of the difficulties presently encountered by the Department in attempting to comply with the cited sections of the law, as interpreted by this office in several recent opinions (see opinions of the Attorney General 050-394, dated August 11, 1950, and 050-437, dated September 8, 1950) and as construed by the Circuit Court of the Second Judicial Circuit in the recent case of *Ghiotto v. McKethan*.

There is no need to repeat here all the general principles and moral philosophies upon which competitive bidding statutes are founded; most of these are contained rather fully in my previous opinions referred to above. However, these elements must be kept in mind in any effort to further delineate the scope of such statutes and their effect on any particular type of transaction. And, in attempting to set forth a general interpretation of these statutes, the well settled legal rules that such laws are mandatory, must be strictly enforced and not frittered away by exceptions, are basic. Also, it may be helpful to review generally those contracts and purchases which are normally not considered to be within competitive bidding statutes, as a preface to the discussion of the instant problems, even at the risk of unduly lengthening this opinion. In general, there are certain types of contracts and provisions ordinarily considered not to be within the purview of competitive bidding statutes. The employment of accountants, attorneys, architects, engineers, surveyors, building inspectors, artists, construction superintendents and the like (annotations in 44 A.L.R. 1150, et seq. and 142 A.L.R. 542, et seq.) and the purchase of public utility services (annotation 128 A.L.R. 168 et seq.) have usually been held not to be within such statutes. Although there is a sharp conflict in the authorities it seems that a majority of the courts, where the question has come up, have held that such statutes are not applicable to articles and materials controlled by patent or monopoly where any advertisement for competitive bidding would not obtain a price below the controlled price set by the manufacturer or producer (43 Am. Jur. 757, Section 16; annotation in 77 A.L.R. 702; 63 C.J.S. 570, Section 996). There is a possibility that the Supreme Court of this State might follow the rule that such purchases are not within the Statute. As a general rule provisions of such statutes do not apply to cases of actual

emergencies (43 Am. Jur. 772, Section 31; 63 C.J.S. 571, Section 996; *Los Angeles Dredging Company v. City of Long Beach, Cal.*, 291 P. 839, 71 A.L.R. 161, text 168; *Harlem Gaslight Company v. City of New York*, 33 N. Y. 309, text 329; annotation in 71 A.L.R. 173; 2 Dillon on Municipal Corporations 1200, Section 802), especially where the delay necessitated by public bidding would cause the public irreparable loss or would greatly aggravate conditions constituting a menace to public health or welfare (63 C.J.S. 571, Section 996). The court of Appeals for New York, in the case of *Harlem Gaslight Company v. City of New York*, 33 N. Y. 309, text 329, concerning this exception, said that "Competitive offers or bids have no other object but to insure economy and exclude favoritism and corruption in the furnishing of labor, services, property and materials for the uses of the city. This was the purpose and the only purpose of the framers of the statutes, and when they have this effect given to them, nothing further is needed. They are not to have such a construction as to defeat this purpose, to impede the usual and regular progress of the public business, or to deprive the inhabitants, even temporarily, of those things necessary and indispensable to their subsistence, their health, or the security and protection of their persons or property. Contingencies may arise when services, materials and property, above the prescribed value, may be immediately needed, and where competitive offers and written contracts would be unserviceable or impossible. In such a case the statutes would not apply, because such application could not have been intended. Whenever the nature of the service, or of the property needed for the public uses, or the time within which it must be had to prevent irreparable mischief under competitive offers is impossible, then the provisions of the acts referred to cannot apply, because such could not have been the intention of the law makers, and such emergencies were not amongst the mischiefs which the provisions referred to were designed to correct . . . In the case we are considering, the case shows that the plaintiff's mains and conductors were the only things of the kind laid down in the streets of the city north of the center of 79th street, and there was no other individual company or corporation having the ability and the means to supply the city with illuminating gas to light the streets. Knowing this, the common council, in granting to the Harlem Company the privilege of occupying the streets with their mains, did so upon condition that the latter should supply the streets of the city with gas for street purposes, within two years from the time of the passage of the resolutions. This condition is wholly inconsistent with the idea of competition from several bidders, and the contract awarded to him whose offer was the best for the city. Had the common council, in place of this condition invited proposals in the usual form, there could have been but a single offer at best, and the provisions of the statutes would have failed of effect because they were not applicable to such a subject." This rule of the New York Court was quoted with approval by the Supreme Court of California in the case of *Los Angeles Dredging Company v. City of Long Beach*, supra. In this connection the term "emergency" is not subject to definite definition and each case must stand upon its own facts. A real present, immediate and existing emergency must exist and not merely a condition which may or may not develop into an emergency. (See *Raynor v. Town of Louisburg*, 220 N.C. 348, 17 S.E. 2d 495). The correct rule is that the purchasing authorities "have power to meet any emergency which may exist without complying with . . . provisions requiring advertisements,

but they must satisfy themselves and be able to satisfy the courts that the emergency is such as to prevent them from complying with these provisions. If an emergency exists, which can only be overcome by disregarding the provisions for advertising, the official board making the purchase must be prepared to show that fact. (2 Dillon on Municipal Corporations 1202, Section 802).

With the above general principles firmly established, then, I shall attempt, in so far as it is possible for me to do so, to discuss the application of these rules and requirements to the problems raised by your letter.

One of the situations which apparently needs some guidance is the question of what constitutes a transaction within the \$1000 limitation. I understand that the various Road Department district (5) and subdistrict offices (18) originate requisitions for various materials and supplies, which are duly forwarded to the central purchasing division of the Road Department in Tallahassee. Apparently it has been the practice to treat each requisition as a separate purchase even though other requisitions for the same identical goods are received simultaneously, and as long as each individual purchase or order is kept below \$1000, it is obtained without advertising for and receiving competitive bids. The department now wishes to know if it may be required that the division treat a number of separate requisitions for identical or similar material as one single purchase, thus necessitating competitive bidding if the grand total exceeds \$1000. If so, the department desires to ascertain just how this could and should be administered so as to comply with the law.

To state a general rule which would be applicable to all such purchase would be well nigh impossible, it would be impracticable of operation and probably impossible of compliance to say that the statute requires the Purchasing Division of the Road Department to hold every order received for a given period of time to see if additional similar orders are received which would cause the total amount to exceed \$1000 and therefore make it necessary to obtain competitive bids. Of course, the deliberate splitting of contracts or invoices into smaller transactions so as to bring them below the \$1000 limitation is obviously an avoidance of the law. (See *Kelly v. Cochran County (Tex.)* 82 S.W. 2d 641; opinion of the Attorney General 050-508, October 30, 1950).

It seems to me that perhaps the best solution to this problem, and one which seems in line with the requirements of the statutes, is to place the burden of compliance with the law more directly on each of the district and sub-district offices rather than on the central Purchasing Division. By so saying, I mean that each district or sub-district should be charged with the responsibility of anticipating their requirements for supplies and equipment for each project, and, for those things which could be conveniently warehoused, even for a number of projects over a reasonable period of time, and then required to submit their requisitions to cover total anticipated needs for such period or projects. The daily or weekly hand-to-mouth practice of ordering supplies and equipment in small lots should be discouraged, and if done for the purpose of keeping orders below the statutory maximum is, in my opinion, contrary to the law. In other words, if a district or subdistrict office knows that for one project or even for a series of

projects during a reasonable, foreseeable period, it will in all probability use a quantity of certain material which would exceed in value \$1000, it should order the necessary quantity of material as one transaction. When such responsibility is assumed by the field offices, I believe it would then be entirely proper for the central purchasing division to consider requisitions from the various field stations as separate transactions, and need not, in every case, be required to pool requisitions from one or more districts, as might otherwise be necessary. Of course, I do not mean to imply that the central purchasing division would thereby be relieved of the responsibility for ordering major quantities of materials for statewide use on a competitive bidding basis. The suggested procedure outlined above is intended only to cover those items of equipment or materials which are presently being purchased in small quantities and as an individual, less than \$1000, orders, but which can reasonably be anticipated to exceed that limit over a reasonable period of time. In its good judgment, the department should continue its present practice of advertising for competitive bids on those materials in general use, and, where administratively desirable and economically sound to do so, should pool requisitions from various districts for other supplies into one bulk transaction.

In the final analysis, strict compliance with the law must depend on the good faith and integrity of the administrative officers in charge. Any deliberate attempt to split orders or even to fail to combine orders when such should be done logically in the interests of economy, for the purpose of keeping the cost price of each order below the statutory maximum is, in my opinion, an evasion of the statute and therefore unlawful. On the other hand, it is not the intent of the law to so restrict the Road Department as to make its purchasing task impossible. It may well be that five similar orders from five different districts could be received, each for a \$900 quantity of supplies which, because of delivery charges or other factors, would best and most economically be purchased locally for each district. If each order was submitted and processed by the department in good faith and without purpose to evade the statute, and in the sound discretion of the authorities would best be handled as separate transactions, to do so would not, in my opinion, necessarily violate the law. For further example ten bridges may require \$200 worth of lumber each to floor them. If the project is to floor ten bridges in the same area at one time, doubtless the amount involved would be considered as \$2000 and within the purview of the competitive bidding requirements. However, should the same ten bridges burn down or be washed away on separate days within a thirty day period of time so as to require separate rebuilding at a cost not exceeding \$1000 for each bridge, necessary purchases of the material probably should be considered as separate transactions. Each such instance, of course, would have to be carefully considered on its own merits, in the light of the individual factual situation, and the appropriate method of handling determined by sound analysis of all the many factors. As stated above, compliance with the law must be enforced by the officials operating under it and it is the responsibility of such authorities to so manage their purchasing practices as to abide by the spirit as well as the letter of the statutory requirements. "Where the requirement as to competitive bidding depends on the amount involved in the contract to be let, it must be observed in good faith by the purchasing authority." And where the purchasing authority is prohibited by statute "from letting contracts involving an expenditure

of more than a specified sum without submitting the same to competitive bidding, it cannot divide the work and let it under several contracts," so that the amount of each will be below the amount required for competitive bidding. (3 McQuillin on Municipal Corporations 1181, Section 1290; 44 C. J. 101, Section 2185, note 59; Fire Extinguisher Manufacturing Company v. City of Perry, 8 Okla. 429, 58 p. 635; Ludwig-Hommel and Company v. Woodsfield, 115 Ohio St. 675, 155 N.E. 376; People v. Lamon, 232 Ill. 587, 83 N.E. 1070, text 1071; Tobin v. City of Sundance, 35 Wyo. 219, 17 P. 2d 666, text 673; State v. Dugger, 172 Tenn. 281, 111 S.W. 2d 1032, text 1034; City of Tomkinsville v. Miller, 195 Ky. 143, 241 S.W. 809, text 811). However, while the question of whether two or more purchases are to be construed as one or more transactions must be determined in the first place by the purchasing agency, this determination may be reviewed by the State Comptroller in his capacity as auditor of all claims against the state. Where purchases are made as separate transactions, at least where there may be doubt, evidence of such transactions being separate should be furnished the Comptroller upon request.

Another problem type of purchase which currently presents difficulties for the Road Department is that of obtaining critical or scarce materials. I understand that such materials are those under heavy demand and that suppliers have no difficulty in marketing such goods at prevailing prices; hence, they are often not interested in submitting bids on these critical materials. Furthermore, such goods may only be available at infrequent and irregular intervals and no supplier can be sure of his ability to obtain specific quantities and, as a consequence, will not enter a bid to furnish any set quantity at any specified time. Consequently, the Road Department would like to be advised whether the purchase of critical and scarce materials to the value of \$1000 or more without competitive bidding can be approved under such circumstances in that this situation might be considered as an emergency condition and therefore constitute an exception to the competitive bidding statute.

As to the contention that such could be considered an emergency, I cannot agree. While the existence of an emergency is sometimes considered a valid reason for dispensing with the requirements of competitive bidding, as discussed above, there must be a real, presently existing emergency and not merely one which may arise. As stated in *Raynor v. Commissioners of Town of Louisburg*, supra, "the emergency which would relieve (the town from) the duty of advertising for bids must be present, immediate and existing, and not a condition which may or may not arise in the future, or one that is about to arise or may be expected to arise." This rule would, I believe, apply to the instant situation. No actual present emergency exists; it is simply a case where it may be reasonably anticipated that a shortage will occur. Of course, where a distinct emergency does actually arise, such as where a bridge or road is washed out or damaged, materials not on hand are immediately required, and failure to take prompt action would seriously injure the public interest, the department probably has the authority to waive the competitive bidding requirements. Here again, however, a word of caution must be injected. In *Safford v. City of Lowell (Mass.)*, 151 N.E. 111, where the competitive bidding statute under consideration specifically provided it could be waived in "a special emergency involving the health or safety of the people or their property," the court

stated as follows: "it is manifest that that language does not apply to a condition which may clearly be foreseen in abundant time to take remedial action before serious damage to the health or to the safety of persons or property is liable to occur. Without doubt, lack of foresight and failure to take proper precaution to meet contingencies which any prudent person would anticipate might occasion a condition which would jeopardize public health and safety, and to which the words of the statute would be applicable. It would be remarkable, however, if the legislators used them to describe such a situation. It is not to be supposed that they intended to make it possible for municipal officers to avoid advertising for bids for public work by merely delaying to take action to meet conditions which they can foresee until danger to public health and safety has become so great that the slight further delay caused by advertising will entail public calamity . . ." See also opinion of the Attorney General 047-329, 1946-1947 Biennial Report, page 144.

However, another of the recognized exceptions to competitive bidding statutes is where it is known that advertisement will not result in competitive bids being received. 43 Am. Jur. 772. But a mere belief of the authorities, albeit in good faith, that no one other than the one to whom the contract is let would be willing to undertake the job is not sufficient; the validity of the exception to the statute must rest on proof positive. See *Tobin v. Town Council of Town of Sundance (Wyo.)* 17 P. 2, 666, text 671. Application of this general rule to the instant problems, then, would indicate that a mere certification, based only on an honest belief of the inability to obtain competitive bids, would not be sufficient. As stated in the *Tobin* case, *supra*, the only true way to determine whether bids would be received, in the absence of other positive knowledge, would be to advertise for same.

Accordingly, it is my suggestion that the obtaining of critical materials be handled in the following manner: When the supply of a particular item or material on hand in the department reaches a point where it is foreseen that within a reasonable period such supplies will be exhausted, and such material is in the critical category, that the department advertise for bids on such materials. If no bids are received, it is my opinion that the department would thereafter, for a reasonable period of time, be legally justified in securing such supplies on the open market without further advertising. The department could then certify that such purchases were made because it was positively known that no bids would be received, based on its prior unavailing efforts. See, in this connection, opinion of the Attorney General 048-59, Biennial Report 1947-48, page 143.

A third question raised by the Department is whether or not it has authority to purchase without competitive bidding certain items of equipment which have standard quoted prices, generally equal among all suppliers, when such purchases would be in excess of \$1000. It is stated that such prices are set by the manufacturers and are actually quoted to state agencies at less than the wholesale price paid by jobbers. In such a case, it is contended, competitive bidding would achieve no purpose, since it is assumed that all suppliers would bid at the already quoted and identical price. Be that as it may, I can find nothing in the many court decisions and legal reference works which makes an exception to the competitive bidding statutes for such a

situation. Therefore, it is my opinion that the requirements of the statute must be complied with, even though such advertising for and receiving bids proves to be nothing more than a formality. In addition, there is always the possibility that one manufacturer or supplier, in the hope of securing a major portion of the department's business, might see fit to reduce its standard price for a large order, and thereby result in a saving to the state, thus achieving one of the primary objects of the competitive bidding statutes. This premise would not necessarily apply to materials controlled by patent or monopoly where any advertisement for competitive bidding could not obtain a price below the controlled price set by the manufacturer or producer, since as previously here discussed, it is a general rule, although there is conflict on the point, that competitive bidding is not required where only one person or one company would be able to supply the materials or equipment desired. This latter exception, however, is not applicable to the example you mention where there are similar competitive products produced by various manufacturers.

Your last category of problem purchases deals with items peculiar to the convict camps operated by the State Road Department such as groceries, vegetables, meats and clothing. Because of constant fluctuations in prices of such articles on today's market, and the need to purchase such items repeatedly, even daily, difficulties are encountered in obtaining competitive bids. It is therefore asked if such purchases, being for a specific purpose authorized by a separate chapter of the statutes come within the restrictions of Section 341.15, Florida Statutes.

The responsibility of the State Road Department to operate convict camps was conferred by pertinent provisions of Chapter 952, Florida Statutes, which expressly give the department authority to "make such purchases as may be necessary for the efficient and economical employment" of such road force (Section 952.07 and 952.17) and further prescribe that such prisoners shall be fed, clothed, etc. from road department funds (Sec. 952.21). Since these sections do not specify any particular method of, or limitation on, making such purchases, the question is whether these latter statutory provisions are required to be construed together with Section 341.15, and therefore made subject to the \$1000 limitation contained therein.

The last sentence of Section 341.15 prohibits the Road Department from purchasing "supplies or equipment" to the value of \$1000 without advertising, but does not define the scope of such limitation. However, the preceding portion of the section refers to the "furnishing of any materials or supplies of any kind whatsoever to be used in the work of the state", which descriptive phrase can be assumed to also apply to the last proviso. It appears to me that the provisions of Chapter 952 must be construed in *pari materia* with the basic authorities of the Road Department contained in Chapter 341. Although included in separate chapters of the compiled statutes, the laws themselves were enacted or amended at the same sessions of the legislature (1917 and 1919), pertain generally to the overall functions of the department and the sole purpose of the convict road force is to assist in the construction and maintenance of the roads. (See Section 952.16). Consequently, the operation of the camps, feeding, housing, and clothing of the convicts are, I believe, reasonably to be considered as

part of the work of the state, directly connected with the primary function of the road department to build and repair roads. Hence, in my opinion, the \$1000 limitation applies to purchases of food and clothing for these state convicts under the supervision of the Road Department.

Accordingly, it would appear that the basic principles outlined in the first part of this opinion should govern all purchases made by the department, including supplies for the convict camps. In other words, those items which reasonably should be bought in large purchases should be so procured; this would include, in my opinion, staple groceries, clothing and things of similar character. For those items such as fresh vegetables, meats, and other perishable articles which would normally not be purchased in more than \$1000 quantities, the limitation should not prove to be a serious obstacle.

Again, as previously stated, compliance with both the spirit and letter of the law must rest primarily upon the local purchasing officers, and other duly authorized departmental administrators, who must so apply the statute to each individual case as will best serve to achieve the ends for which the statute was designed. It is reiterated that any quantity of materials or supplies which should reasonably be considered a single purchase, should be obtained by competitive bidding methods, if to the value of \$1000 or more, and no splitting of orders to circumvent the law can be countenanced. Yet for those items which are in good faith, reasonably, and for administratively sound reasons, purchased in small quantities, no unrealistic insistence on combining requisitions simply to exceed the statutory limitation is necessarily required.

It is hoped that the foregoing general discussion and interpretation of the law will be of assistance to your office, as well as to the Road Department, in the administration of the purchasing functions of the department, and will aid all concerned in complying fully with the intent of the governing statutes.

COUNTY ROADS AND BRIDGES

August 15, 1949—049-383.

TAX COLLECTOR—NO DUTIES—COUNTY ROAD FUNDS—DIVISION BETWEEN COUNTY COMMISSIONERS AND MUNICIPALITY—HARDEE COUNTY

QUESTION: May the tax collector of Hardee county, Florida, be compelled to give the City of Wauchula an accounting showing the exact amount due them as their part of taxes collected in the road and bridge district in which the said city is located?

To: *Rosin and Paderewski, Attorneys at Law, Arcadia, Florida:*

.....

I find nothing from the statute which places any obligation, either direct or implied, upon the tax collector any duty in connection with the division of the funds aforesaid. The accounting concerning such funds is between the county commissioners and the municipality and not between the tax collector and the municipality. We, therefore, think that the above question should be answered in the negative.

December 19, 1949—049-602.

**LOWEST BIDDER—PRIVATE CONTRACTOR—REPAYMENT TO
PRIVATE INTERESTS—SEC. 343.14 F. S. '41**

QUESTION: May the board of county commissioners of Osceola county pay a private contractor a bill totaling \$1,960 for county road work if the county did not comply with Section 343.14, Florida Statutes, prior to performance of the work?

To: Honorable Lawrence Rogers, Attorney for Board of Osceola County Commissioners:

.....

Subject to the above remarks, your question is answered in the negative.

January 6, 1950—050-4.

**COUNTY ROAD TAX—FIVE MILL LIMITATION—DIVISION
WITH CITIES—§343.17, F. S.**

QUESTION: Where the County of Manatee levies five and one-half mills for road purposes, is it by reason of the five mill limitation under Section 343.17, Florida Statutes 1941, liable to the municipalities in said county for a division of sums collected from the levy of the additional one-half mill?

To: Honorable J. Ben Fuqua, Manatee County Attorney:

.....

I am, therefore, of the opinion that the above question is to be answered in the affirmative.

August 8, 1950—050-387.

**COUNTY FUNDS—CONSTRUCTING AND MAINTAINING ROADS
IN MUNICIPALITIES—JOINING WITH MUNICIPALITY
IN BUILDING AND MAINTAINING ROAD**

QUESTION: Where a county owns and maintains a public building used for county purposes, within the corporate limits of a municipality, may the Board of County Commissioners with the consent of the municipality, pave the necessary municipal streets so as to connect the said building with one or more of the county or state paved roads passing through the said municipality?

2. May a county expend funds from its Road and Bridge Fund for the construction, repair or upkeep of a road or highway lying wholly or partly within the corporate limits of a municipality?

3. Where a highway or street runs along the boundary of a municipality in such manner as to place one-half of the said highway or street within the municipality, and the other half without such municipality, may the said municipality and county jointly improve, reconstruct or maintain such street or highway?

To: Honorable W. Kenneth Barnes, County Attorney, Dade City, Florida; Honorable T. W. Conely, Jr., County Attorney, Okeechobee, Florida:

.....

In the light of the above and foregoing authorities, statutes and

observations, we feel that each of the three above stated questions should be answered in the affirmative when the street, road or highway in question is or will be used by, or adopted for use by, the general public of the county and not one suitable for municipal use only. If it is needed as a public way by the residents of the county generally it serves a county purpose so that county funds may be expended on it.

November 7, 1950.—050-519.

**COUNTY BUDGET—SPECIAL ROAD AND BRIDGE TAX—NO
LIABILITY TO MUNICIPALITIES §343.17,
FLORIDA STATUTES 1949**

QUESTION: Where an item of \$3,000.00 for road and bridge purposes, is carried in the county budget, which said item of expenditure is met by receipts from county race track funds and county gas tax funds, in the absence of a special levy for road and bridge purposes pursuant to Section 343.17, Florida Statutes, 1949, does the county incur any liability to a municipality within its boundaries for any portion of the above stated sum so appearing in its budget?

To: Honorable Lawrence Rogers, County Attorney, Osceola County, Kissimmee, Florida:

.....
..... the question is answered in the negative.

FERRIES, TOLL BRIDGES, DAMS AND LOG BRIDGES

January 19, 1949—049-17.

**OVERSEAS ROAD AND TOLL BRIDGE DISTRICT—CREATION BY
CHAPTER 16598, SPECIAL ACTS OF 1933—EXPENDITURE
OF FUNDS FOR PUBLICITY**

QUESTION: Whether the Overseas Road and Toll Bridge District has authority to expend funds for publicity purposes?

To: Mr. B. M. Duncan, General Manager and Chief Engineer, Overseas Road and Toll Bridge District, Marathan, Florida:

.....
The answer to the question therefore must be in the affirmative.

CHAPTER XXIII

RAILROAD AND OTHER REGULATED UTILITIES

REGULATION OF PRIVATE WIRE SERVICE

June 30, 1950—050-325.

RAILROAD AND PUBLIC UTILITIES COMMISSION—ADVANCED WITNESS FEES BY ASSISTANT ATTORNEY GENERAL— REIMBURSEMENT AUTHORIZED—CHAPTER 365, FLORIDA STATUTES—ENFORCE- MENT OF

QUESTION: May the Railroad and Public Utilities Commission reimburse an Assistant Attorney General for certain witness fees advanced by him for the payment to state witnesses to appear and testify in the matter "In re: Application of Leonard and Janet Codomo for reinstatement of telephone service at Suburban Club Apartments in Miami, Florida, under the Rule and Regulations of the Commission"?

To: Florida Railroad and Public Utilities Commission:

.....

It is my opinion that since Chapter 365 gives the Florida Railroad and Public Utilities Commission all the powers which have been granted to it under the laws of the State of Florida for the purpose of enforcing the so-called bookie bill, that the Commission was well within its legal powers to promulgate the rule under which the above cause was heard before the Commission, and since all of the evidence and the testimony in this case had been secured by the Attorney General under and by virtue of the authority of Chapter 365, Florida Statutes, and in the light of the language of Section 365.14, supra, it is my further opinion that the sum of money above referred to which was advanced for witness fees on the part of an Assistant Attorney General can be reimbursed to said Assistant Attorney General out of the special appropriation made by the Legislature for the enforcement of Chapter 25016, Laws of Florida, Acts of 1949.

October 18, 1950.—050-493.

WESTERN UNION TELEGRAPH COMPANY—ROOM FURNISHED— WIRE INFORMATION TO BASEBALL GAMES—OPERATOR VIOLATES—GAMBLING LAWS CHAPTER 849— BOOKIE BILL CHAPTER 365, FLORIDA STATUTES

STATEMENT: and **QUESTIONS:** "The Western Union Telegraph Company furnishes to a certain room, over a private telegraph wire, information concerning the outcome of baseball games played in the National and American Leagues. Said wire is contracted for between the Western Union office in the town where the room is located and the room, and it is not connected to or available for general telegraphic or teletypewriter exchange or toll service. At said room, tickets are sold for 10¢ each. Each of these tickets lists two major league

baseball teams. The tickets are sealed, so that the purchaser doesn't know which two major league baseball teams are named on the ticket purchased by him until after he has bought and opened the ticket. In order for a ticket purchaser to win, each of the two teams named on his ticket must score more runs that day than any team in either league other than said two teams. The purchaser of a winning ticket is paid \$8.00. The winner is determined by the use of the information which comes to the room over said private wire.

"Does the operator of the room violate any Florida law against gambling?"

"Does the operator violate the Bookie Bill, being Chapter 365, Florida Statutes?"

To: Honorable Fuller Warren, Governor of Florida:

AS TO QUESTION ONE:

The operation described by you undoubtedly constitutes gambling.

Therefore, the operator of the room is guilty of the felony of keeping a gambling house contrary to Section 849.01, Florida Statutes. . . .

The operator of the gambling room is also guilty of the misdemeanor of betting on the result of a contest of skill, viz., baseball games, in violation of Section 849.14.

The operator of the room is also guilty of the misdemeanor of setting up and promoting a game of chance contrary to Section 849.11. And, under the common law rule that all participants in a misdemeanor are guilty of committing it, any one who assists the operator in conducting the said gambling operation is also guilty of violating Section 849.11.

AS TO QUESTION TWO:

.
. it is my opinion that the operator of said room who uses the said telegraph wire for the purposes outlined by you is guilty of violating Section 365.02, which is a part of the Bookie Bill.

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CHAPTER XXIV

CONSERVATION, ARCHEOLOGY AND GEOLOGY

FISH AND GAME, GENERALLY

April 5, 1949—049-150.

GAME AND FRESH WATER FISH COMMISSION—CONSTITUTIONAL—JURISDICTION—§371.14, F. S. '41, VALID—VIOLATIONS—PENALTY

QUESTION: If Section 371.14, Florida Statutes, 1941, was abandoned by the Game and Fresh Water Fish Commission, has it been validly readopted? If so, what is the maximum penalty for a violation of said section?

To: *Honorable Sam D. May, County Judge, Washington County, Chipley, Florida:*

.....

Therefore, in view of the foregoing, it is my opinion that Rule 9 of the Game and Fresh Water Fish Commission prescribes and controls the lawful methods of taking fresh water fish. Section 371.14, in its relation to fresh water fish is valid only in so far as it does not conflict with Section 30, Article IV, of the State Constitution or a rule of the commission. The maximum penalty for a violation of Section 371.14 or Rule 9 of the commission is two hundred dollars or imprisonment not exceeding ninety days.

August 24, 1949—049-396.

GAME AND FRESH WATER FISH COMMISSION—RULES—REGULATIONS—§§371.19, 371.29—INEFFECTIVE

QUESTION: Do Sections 371.19, 371.29, Florida Statutes, inclusive, have any effect on the Game and Fresh Water Fish Commission in its authority to establish rules and regulations?

To: *Honorable Coleman Newman, Director, Game and Fresh Water Fish Commission:*

.....

In view of the foregoing, it is my opinion that Sections 371.19 to 371.29 inclusive, are ineffective in so far as they are inconsistent with Article 4, Section 30, Constitution of Florida, or any rule of the Game and Fresh Water Fish Commission made pursuant thereto.

GAME AND FRESH WATER FISH

February 11, 1949—049-55.

AMENDMENTS TO SUBSECTIONS—VALIDITY—PUBLISHED AT LENGTH—ARTICLE III, SECTION 16, FLORIDA CONSTITUTION

QUESTION: Would an amendment to subsection (1) of Section

372.57, Florida Statutes, 1941, without including in such amendment the entire subsection from (1) through (15) be valid?

To: Honorable Ben C. Morgan, Director, Game and Fresh Water Fish Commission, Tallahassee, Florida:

.....

In the light of the foregoing, I am of the opinion that the above stated question should be answered in the negative.

.....

February 22, 1949—049-68.

COMMISSION MEETINGS—RULES AND REGULATIONS PROMULGATED—LEGAL PLACE—TALLAHASSEE

QUESTION: What is the legality of any action taken by the Game and Fresh Water Fish Commission in meetings of said Commission held at places other than Tallahassee, Florida?

To: Honorable Ben C. Morgan, Director, Game and Fresh Water Fish Commission, Tallahassee, Florida:

.....

In the light of the foregoing statute and Supreme Court ruling, it is my opinion that the Game and Fresh Water Fish Commission may establish branch or division offices in other cities and towns in the state, but that all meetings where rules and resolutions are made and promulgated should be held in Tallahassee, Florida, until such time when the question shall be further clarified either by an act of the Legislature or decision of the Supreme Court.

February 24, 1949—049-74.

ARRESTS—POWERS VESTED IN CONSERVATION OFFICERS—CONVICTIONS—FEES ALLOWED

QUESTIONS: 1. Do Conservation Agents of the Game and Fresh Water Fish Commission have authority to execute warrants in connection with violations of the fresh water fish and game laws of this State?

2. What compensation is allowed for the services of such warrants and to whom payable?

To: Honorable Douglas Stenstrom, County Judge, Sanford, Florida:

.....

Under Section 372.07, Florida Statutes, "duly authorized conservation agents, have power and authority, throughout the State . . . to execute warrants and search warrants for the violation of" the game and fresh water fish conservation laws, rules and regulations. This answers the first question.

Under Section 372.72, Florida Statutes, the duly authorized Conservation Agents of the Game and Fresh Water Fish Commission are "allowed for making arrests the same fees as sheriffs, and the same mileage for conveying prisoners, the same to be taxed as costs in the cause, in case of conviction, and paid in like manner as compensation of sheriffs, but no fees or mileage shall be allowed in case of acquittal." All such fees and mileage are required to "be deposited

in the state treasury to the credit of the state game fund." This seems to answer the second question. To the same effect see also opinions of former attorneys general in 1931-2 Biennial Report, 432, 1941-2 Biennial Report, 482 and 1945-6 Biennial Report, 511.

March 3, 1949—049-82.

**CONSERVATION OFFICERS—SERVICE OF PROCESS—WARRANTS
—SUBPOENAS—NO OTHER LEGAL PAPERS**

QUESTION: Do conservation agents of the Game and Fresh Water Fish Commission have authority to execute warrants, subpoenas or other legal papers in connection with violations of the game and fresh water fish laws of the State of Florida?

To: Honorable Ben C. Morgan, Director, Game and Fresh Water Fish Commission, Tallahassee, Florida:

.....

Under Section 372.07, Florida Statutes,

Under Section 372.72, Florida Statutes,

It is my opinion that this statute answers your question in the affirmative in regard to warrants, search warrants and subpoenas; but conservation agents are not authorized to serve other legal papers.

April 4, 1949—049-140.

**RABBITS—HUNTING AT NIGHT—GUN AND LIGHT—SPECIAL
PERMIT—RULES**

QUESTION: Is the hunting of rabbits at night with the aid of an artificial light and a gun a violation of the game laws of the State of Florida?

To: Honorable H. C. Parkham, County Judge, Bradenton, Manatee County, Florida:

.....

Under rule 3.01, rabbits are defined as unprotected animals, but rule 16 prohibits the using of a light and gun at night to kill game. The director, however, is authorized to issue special permits for the taking of unprotected animals at night, when it is first approved by the Commissioner of the district of the applicant.

In conclusion, I am of the opinion that..... if the hunter applies to the commissioner of the district where he desires to hunt for his approval, and to the Director of the Game and Fresh Water Fish Commission for a special permit authorizing him to hunt rabbits at night and is given such permit then it is permissible to hunt rabbits at night.

April 13, 1949—049-171.

**CONSERVATION AGENTS—ARRESTS AND CONVICTION—FEES
AND MILEAGE ALLOWED**

QUESTION: Is the Commission of Game and Fresh Water Fish and its conservation agents entitled to receive fees for making arrests and conveying prisoners?

To: Honorable Coleman Newman, Director, Game and Fresh Water Fish Commission:

Section 372.72, sets forth. . . .

In view of the foregoing statute, it is my opinion that the Commission of Game and Fresh Water Fish and its conservation officers should receive the same fees for making arrests and conveying prisoners that are allowed sheriffs. That said fees shall be deposited to the credit of the State Game Fund.

April 29, 1949—049-186.

LANDS—CHARLOTTE COUNTY—ASSESSMENT BY COUNTIES—
INVALID

QUESTION: Are the lands owned by the game and fresh water fish commission of this state in Charlotte County, Florida, subject to taxation for debt service taxes assessed for the purpose of paying general county bonded indebtedness existing at the time of the purchase of the said lands?

To: Honorable Earl D. Farr, County Attorney, Punta Gorda, Florida:

.

In the light of these observations there is sufficient doubt upon the right of the county to assess the state lands in question as to suggest the invalidity of the assessment notwithstanding the above provision found in Section 372.12, Florida Statutes, 1941. Personally I am inclined to think that the assessment is invalid and that the above question should be answered in the negative.

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June 8, 1949—049-245.

GAME AND FRESH WATER FISH COMMISSION—SUBORDINATE
TO REGULATIONS STATE BOARD OF HEALTH—
POLLUTION LAWS

QUESTION: Is the Game & Fresh Water Fish Commission or the State Board of Health responsible for enforcing the stream pollution laws which affect the life and propagation of fresh water fish?

To: Honorable Coleman Newman, Director, Game & Fresh Water Fish Commission:

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In view of the foregoing, it is my opinion that the Game and Fresh Water Fish Commission may proceed to enforce Section 372.85, Florida Statutes, in so far as a violation of said section may affect the fresh water fish of this state. That the commission may make and promulgate rules and regulations protecting fresh water fish from being killed and destroyed by stream pollution. However, such a rule or regulation of the Game and Fresh Water Fish Commission is subordinate to the rules and regulations of the State Board of Health, when said board is acting under authority of Section 381.43, Florida Statutes, 1941.

June 20, 1949—049-283.

GAME AND FRESH WATER FISH COMMISSION—ARRESTS—DEFENDANT RELEASED—COSTS

QUESTION: Where a defendant, arrested by a conservation officer of the Game and Fresh Water Fish Commission of this state for violating the rules and regulations of such commission, is released upon the condition that he pay the costs in the case, should the commission be paid its fees under Section 372.72, Florida Statutes?

To: *The Game and Fresh Water Fish Commission:*

.....

In the light of the above and foregoing matters and things it seems that the above question should be answered in the negative.

July 6, 1949—049-304.

RESTAURANTS—FRESH WATER FISH ON MENU—DEALERS' LICENSE NOT REQUIRED

QUESTION: Is a restaurant that sells fresh water fish on their menu required to purchase a retail fish dealers' license?

To: *Honorable Coleman Newman, Director, Game & Fresh Water Fish Commission, Tallahassee, Florida:*

.....

Therefore, your question is answered in the negative.

December 8, 1949—049-580.

GAME AND FRESH WATER FISH COMMISSION—HUNTING LICENSES—DENIED OR FORFEITED—PERSONS CONVICTED—SECTION 372.84, F. S.

QUESTION: When should a hunting license be denied or forfeited under Section 372.84?

To: *Honorable Coleman Newman, Director, Game & Fresh Water Fish Commission:*

.....

..... it is my opinion that in the case of conviction of any person for violating the hunting laws, rules or regulations, the hunting license or permit is forfeited upon conviction. The period for which the license is forfeited depends upon when the violation occurred. If it occurred during the open season and the person is convicted, the license should be forfeited and none issued for the remainder of said open season. If the violation occurs during the closed season and the person is convicted, he forfeits his right to hunt during the next open season and no license shall be issued to him for that reason.

December 15, 1949—049-590.

FLORIDA MERIT SYSTEM—GAME AND FRESH WATER FISH COMMISSION EMPLOYEES—LEGAL IMPEDIMENT TO—ARTICLE IV, 30 APPLICABLE

QUESTION: Florida Industrial Commission, State Board of Health, State Welfare Board and Florida Crippled Children's Commission have

received an informal request from the Game and Fresh Water Fish Commission to have employees of the latter commission brought into the joint merit system, sometimes designated as Florida Merit System, which serves the first four agencies named. The Florida Merit System functions for such four agencies in pursuance of agreement entered into between them. Is there any legal impediment to the Florida Industrial Commission consenting that the Game and Fresh Water Fish Commission may become a party to such agreement for the purpose of bringing the employees of the latter into such merit system?

To: Honorable Raymond E. Barnes, Chairman, Florida Industrial Commission:

.....

The Game and Fresh Water Fish Commission exists pursuant to Article IV, Section 30, Florida Constitution (added by amendment at the 1942 general election). Paragraph 5 thereof is quoted as follows:

"The commission shall appoint, fix the salary of, and at the pleasure remove, a suitable person, as Director, and such Director shall have such powers and duties as may be prescribed by the Commission in pursuance of its duties under this Section. *Such director shall, subject to the approval of the Commission, appoint, fix the salaries of, and at pleasure remove, assistants, and other employees who shall have such powers and duties as may be assigned to them by the Commission or the Director.* No Commissioner shall be eligible for any such appointment or employment." (Emphasis supplied)

.....

The question is answered by the observation that the above underscored portion of article IV, Section 30, Florida Constitution, would seem to be a legal impediment to the employees of the Game and Fresh Water Fish Commission being placed under the Florida Merit System.

December 19, 1949—049-594.

GAME AND FRESH WATER FISH COMMISSION—PROPERTY SEIZED—DISPOSITION OF

QUESTIONS: 1. What disposition shall be made of seized furs or hides in the event of bond forfeiture?

2. What disposition shall be made of seized fresh water fish and/or furs or hides in the event no means of preserving the items (such as cold storage) is available while awaiting disposition of the case in court?

To: Honorable Coleman Newman, Director, Game and Fresh Water Fish Commission:

.....

Under the provisions of this statute (Sec. 372.73 F. S.), furs and hides are not subject to forfeiture and disposition in the absence of a lawful conviction of the offender, upon trial in a case where the offender has been apprehended and has put up an appearance bond.

In a case where furs and hides are seized under circumstances that the officer making the seizure is unable after diligent effort to

locate or discover the identity of the person taking or possessing them, they may be disposed of in accordance with the statute, but great care and caution should be exercised in such cases and thorough investigation conducted to protect the officer making the seizure against legal action for their value.

In so far as the cited statute applies to fresh water fish, if the conditions and circumstances are such as to justify the court having jurisdiction to entertain the charge against the offender in entering an order directing the forfeiture of the fish before conviction, such an order may be made and the fish given to such hospital or charitable institution as the court might direct, as provided by the statute.

The answer to your second question is largely comprehended in the foregoing answer to your first question. This question inquires regarding disposition of furs, hides and fish seized in cases where the offender has been apprehended and is under prosecution for the commission of the offense. In the case of furs and hides, there is no authority for forfeiture and disposition prior to conviction. In the case of fish, the court may direct forfeiture and disposition by an order entered prior to conviction if the circumstances and conditions in the judgment of the court warrant such action.

February 7, 1950—050-55.

FRESH WATER FISH—PENALTY FOR CATCHING—LICENSE REQUIREMENT—DEALER—SEC. 372.65-71-85, F. S. '41

QUESTIONS: 1. Is the penalty provided for in Section 372.83, Florida Statutes, applicable to a conviction of violating Section 372.65, Florida Statutes?

2. If so, does the fact that the fish were taken from the waters of the St. Johns River between the Atlantic Ocean and Volusia Bar exempt the defendant from liability, as provided in Chapter 23750, Laws of 1947?

3. What does the State have to prove in order to make a case under Section 372.65?

To: Honorable Wayne E. Ripley, County Solicitor, Duval County:

.....

Therefore, it is my opinion that your first question is answered in the negative, inasmuch as a violation of Section 372.65 is a violation of an act of the legislature and not a rule, regulation or order of the Game and Fresh Water Fish Commission. It appears that Section 372.71 provides a penalty for violation of Section 372.65.

.....

In answer to your second question, it is my opinion that your question is answered in the negative.

In answer to your third question, I think the State should prove the following:

1. That the defendant was engaged in the business of a fresh water fish dealer.

2. That the defendant was engaged in such business without having first secured a license as required by Section 372.65.

3. That the defendant was not a dealer operating exclusively in salt water territory.

4. Every material allegation of the information including venue and date of offense should be proven.

April 1, 1950—050-172.

GAME AND FRESH WATER FISH COMMISSION—RULES—FISHING LICENSES—PERSONS FISHING WITH MORE THAN ONE POLE

QUESTION: May the Game and Fresh Water Fish Commission make a rule permitting a person to fish with as many poles as he desires, without having a fishing license, although Section 372.57 (4), Florida Statutes, provides otherwise?

To: *Honorable Coleman Newman, Director, Game and Fresh Water Fish Commission, Tallahassee, Florida:*

.....

Your question is answered in the negative.

April 19, 1950—050-201.

GAME AND FRESH WATER FISH COMMISSION—\$500.00 AUTHORIZED FOR INVESTIGATION OF WILDLIFE OFFICER

QUESTION: May the sum of \$500.00 be paid out of the funds of the Game and Fresh Water Fish Commission to Charles A. Brunner for investigating Wild Life Officer C. J. Finley?

To: *Honorable Lewis H. Tribble, General Counsel, Comptroller's Office, Tallahassee, Florida:*

.....

..... your question is answered in the affirmative.

May 25, 1950—050-254.

GAME AND FRESH WATER FISH COMMISSION—ARRESTS—CONVICTIONS—OFFICERS ENTITLED FEES—SECTION 372.72, FLORIDA STATUTES

QUESTION: What fees are a conservation officer entitled to, when he makes an arrest but does not convey the prisoner, but merely tells the person arrested to appear in court the next day?

To: *Honorable Joseph G. Spicola, Justice of the Peace, Hillsborough County, Tampa, Florida:*

.....

In view of the foregoing, it is my opinion that the conservation officer would be entitled to the arresting fee, in each case upon conviction, but that he is not entitled to mileage because he did not convey the prisoner. To the same effect see also opinion of former Attorney General in 1945-46 Biennial Report 501. (Copy attached).

June 24, 1950—050-313.

GAME AND FRESH WATER FISH COMMISSION—RENTING BOATS FOR FISHING—SUBTERFUGE—LICENSE REQUIREMENTS

QUESTION: Where an individual makes a charge for parking cars on his land but makes no charge for the use of the boats for

fishing to his parking patrons, said individual claiming he is not in business of renting boats, is the County Judge authorized to issue a warrant against said individual for a failure to obtain a license for the renting of boats for fishing?

To: *Honorable R. H. Deason, County Judge, Bristol, Florida:*

.....

The question submitted raises an issue which is essentially judicial and can best be determined by you from an investigation of the facts. If, from an examination of the information furnished, you determine that there is probable cause to believe the party involved is attempting to circumvent or evade the requirements of Section 372.63, then you may issue the warrant. In determining this question there is a point you might consider as being highly material, viz: whether boats are free to persons not parking automobiles.

July 11, 1950—050-337.

GAME AND FRESH WATER FISH COMMISSION—LANDS—BREEDING GROUND—GAME PRESERVE—WITHOUT OWNER'S CONSENT UNLAWFUL

QUESTION: Does the Game and Fresh Water Fish Commission have the authority under the constitutional amendment creating such body, to close to hunting and make a game preserve or breeding ground out of land without the consent of the owner of the land and against the owner's will?

To: *Honorable D. C. Jones, Commissioner, Game and Fresh Water Fish Commission, Naples, Florida:*

.....

It appears from the foregoing that the Commission has the authority to close any area in the State to hunting, and this may be done without the consent of the owner or owners of the land in the area affected. The Commission also has the authority to establish game preserves and breeding grounds in any area throughout the state and may do so without the consent of the owner of the land, if such action by the Commission does not in any way invade the property rights of the owner of the land, but merely consists of closing the area to hunting, fixing bag limits, etc.

However, it is my opinion that the Commission would be acting unlawfully if it attempted to establish a breeding ground or game preserve by turning game loose upon the land of another without the owner's consent, or in anyway attempting to stock the land with game over the owner's protest. The Commission is not authorized to seize, confiscate or use private property against the will of the owner.

August 15, 1950—050-396.

GAME AND FRESH WATER FISH COMMISSION—DEPARTMENT OF INTERIOR—MIGRATORY BIRDS—RULES—ADOPTION—SECTION 30, ARTICLE IV, CONSTITUTION—§372.82, FLORIDA STATUTES

QUESTION: Is it within the authority of the Game and Fresh Water Fish Commission to make and promulgate a rule adopting the

rules and regulations of the Department of Interior, relating to the taking of migratory birds that shall be promulgated from time to time by the Department of Interior, pursuant to the Migratory Bird Treaty Act?

To: Honorable Coleman Newman, Director, Game and Fresh Water Fish Commission:

.....

..... Your question is therefore answered in the affirmative.

August 31, 1950—050-428.

GAME AND FRESH WATER FISH COMMISSION—RULES—VIOLATIONS—PENALTY—§§372.83, 372.84, FLORIDA STATUTES APPLICABLE—CLAY COUNTY

QUESTION: Under Section 372.31, Florida Statutes, 1949, after a conviction by plea of guilty of a person charged with unlawfully taking or attempting to take fish from the fresh waters of Clay County, Florida, with a cast net, without having first obtained a permit, does the County Judge have any discretion as to whether or not he shall enter an order confiscating the cast nets which were taken by the Wildlife Officer at the time of the arrest of the defendant?

To: Honorable Berwick Anderson, County Prosecuting Attorney, Green Cove Springs, Florida:

I am assuming that the defendant was arrested and convicted for a violation of a rule of the Game and Fresh Water Fish Commission, relative to the taking of fresh water fish; therefore, Section 372.31, Florida Statutes, which prescribes a penalty for violating the provisions of Chapter 372, would not apply. Sections 372.83 and 372.84, being Chapter 21945, Laws of 1945, provide a penalty for violation of the rules and regulations and orders of the commission.

Your question is, therefore, answered in the negative if you are seeking to impose the penalty provided for in Section 372.31, and the offense is a violation of a rule of the Game and Fresh Water Fish Commission.

September 29, 1950—050-465.

GAME AND FRESH WATER FISH COMMISSION—WILDLIFE CODE, RULE 5—GUN—PROHIBITED AREAS—MISDEMEANOR —SECTION 372.83, FLORIDA STATUTES

QUESTION: Does Rule 5 of the Wildlife Code, issued by the Game and Fresh Water Fish Commission, make it unlawful simply to enter the prohibited areas set forth in the Rule with a gun, without proof of an intent to actually take game from the area?

To: Honorable R. M. Harris, County Judge, Hendry County, LaBelle, Florida:

.....

Accordingly, it is my opinion that it is a misdemeanor to enter, with a gun, any hatchery, sanctuary, refuge or reservation where hunting and/or trapping is prohibited by the Game and Fresh Water Fish Commission, without the necessity for showing an intent actually

to use such gun. Your question is therefore answered in the affirmative. As it is not the policy of this office to pass upon the constitutionality of statutes, we express no opinion concerning the validity of the rule in question under Section 20 of the Declaration of Rights, of this state.

September 29, 1950—050-467.

FRESH WATER FISH—FISHING—ROD AND REEL—LICENSES REQUIRED—SECTION 372.57(3)—EXEMPTIONS SECTION 372.57(4), FLORIDA STATUTES

QUESTION: Is a person who fishes for fresh water fish with a rod and reel and baits same with live bait required to purchase a fishing license?

To: Honorable Coleman Newman, Director, Game and Fresh Water Fish Commission:

.....

Your question is answered in the affirmative.

October 13, 1950—050-491.

GEORGIA RESIDENT—FISH BOUGHT IN STATE OF FLORIDA—SOLD IN STATE OF GEORGIA—NO LICENSE REQUIRED

QUESTION: Is a resident of the State of Georgia who comes into Florida and buys fresh water catfish and transports them back to Georgia for sale there, required to purchase a Florida retail fresh water fish dealer's license?

To: Honorable Coleman Newman, Director, Game and Fresh Water Fish Commission:

.....

Your question is answered in the negative.

STATE BOARD OF CONSERVATION

February 23, 1949—049-70.

TAYLOR COUNTY—ILLEGAL SPONGES SEIZED—DISPOSITION BY COURT ORDER

QUESTION: What disposition should be made of sponges that have been seized and stored in Taylor County?

To: Honorable George Vathis, Supervisor, State Board of Conservation, Tallahassee, Florida:

.....

The laws of Florida do not specifically provide the State Board of Conservation with any method or means for disposing of sponges that have been seized by its agents. However, in these cases, where the sponges were introduced into evidence in the case, it is my opinion that application should be made to the court for an order directing what disposition should be made.

.....

June 24, 1949—049-296.

STATE BOARD OF CONSERVATION—JURISDICTION—REGULATE
TAKING OYSTERS—LEASED BEDS AND BOTTOMS

QUESTION: Does the state board of conservation, under the conservation statutes of this state, have jurisdiction and power to adopt, promulgate and enforce rules and regulations fixing the size of oysters that may be taken and marketed from leased oyster beds or bottoms?

To: Honorable George Vathis, Supervisor, State Board of Conservation:

.....

Conditioned upon the board fully complying with the above mentioned and cited statutes we are of the opinion that the above question should be answered in the affirmative.

July 29, 1949—049-354.

FISH TAKEN FROM WATERS BY GIG OR SPEAR—COMMERCIAL
PURPOSES ONLY—UNLAWFUL—LEE COUNTY—
CHAPTER 24065, ACTS 1947—APPLICABLE

QUESTION: Is the taking of fish from the waters of Lee County, Florida, by the use of a gig or spear prohibited by state?

To: Honorable George Vathis, Supervisor, State Board of Conservation:

.....

..... The 1949 act applies to all persons and to all purposes for which the fish are taken, but only to such persons who take or attempt to take fish in the prohibited manner from a public pier, dock or bridge.

Subject to the foregoing limitations, the answer to this question is in the affirmative.

September 13, 1949—049-436.

WATER SURVEY AND RESEARCH—FEDERAL PROJECTS—BIS-
CAYNE BAY—NO COMPLICATION BY—CHAPTER 25762,
ACTS OF 1949—DADE COUNTY

QUESTION: Will Chapter 25762, Laws of Florida, Acts of 1949, complicate or prevent the execution of federally authorized projects in the navigable waters of the United States in Biscayne Bay?

To: Colonel A. G. Matthews, Chief Engineer, Division of Water Survey and Research, State Board of Conservation:

.....

It is my opinion that your question should be answered in the negative.

December 16, 1949—049-592.

STATE BOARD OF CONSERVATION—RULES—SALT WATER FISH
—AUTHORITY TO LIMIT SIZE OF

QUESTION: "May the State Board of Conservation, authorized under its rule making power by the provisions of Section 373.06 as amended by Chapter 24126, Laws of 1947, by regulation prescribe the

size of salt water trout that may be taken from the salt waters of the State, authorized by Chapter 25114, Laws of 1949, and prohibit the taking of trout of less size than that fixed by such rule and regulation?"

To: Honorable R. A. Gray, Secretary, State Board of Conservation:

.....

The question is accordingly answered in the affirmative.

December 17, 1949—049-593.

**STATE BOARD OF CONSERVATION—RULES—REGULATIONS—
CLOSED SEASON ON MULLET—USED FOR BAIT ONLY**

QUESTION: "Is the State Board of Conservation authorized, by rule and regulation, to permit the taking of silver mullet, for bait only, during the closed season for the taking of mullet prescribed by Chapter 24204, Laws 1947, upon the determination that such taking is compatible with the safeguarding of the supply thereof, in the interest of conservation?"

To: Hon. R. A. Gray, Secretary, State Board of Conservation:

.....

The question is accordingly answered in the affirmative.

December 27, 1949—049-611.

**POWERS OF BOARD—CONTROL OF FISHING—REGULATIONS—
FIRE FISHING—SEC. 373.06**

QUESTION: May the State Board of Conservation, under the rule making power delegated to it by constitutional authority, implemented by statute, suspend the operation of an existing statute, prohibiting the taking of salt water fish in the salt waters of Hernando County by the means commonly defined as "fire fishing?"

To: Honorable R. A. Gray, Secretary of State Board of Conservation:

.....

If the taking of salt water fish from the waters of Hernando County by means of gig or spear at night time by the use of artificial light would tend to promote the conservation of salt water fish and salt water products, the Board would be acting within its power by rule to suspend the operation of the act.

January 31, 1950—050-48.

**GEOLOGICAL SURVEY DIVISION—FUNDS FROM PUBLICATIONS
—DISPOSITION OF SURPLUS FUNDS—APPROPRIATIONS**

QUESTIONS: 1. Where certain funds, received by the geological survey division of the board in connection with charges made as compensation for furnishing certain publications to individuals and deposited in a separate account in the treasurer's office, remain in such fund at the end of a fiscal year, do the said funds revert to the general revenue fund?

2. If the answer to the first question is in the negative then do the said funds remaining at the end of the biennium revert to the general revenue fund?

To: *Florida State Board of Conservation, Florida Geological Survey Division:*

..... the first question should be answered in the negative and the second in the affirmative.

July 12, 1950—050-339.

U. S. SUPREME COURT—TIDELAND DECISION—SPONGE FISHING
INDUSTRY—NO EFFECT ON RIGHT OF STATE
TO REGULATE

QUESTION: Does the recent tideland decision of the United States Supreme Court affect the right of the State to regulate sponge fishing within three marine leagues from shore?

To: *Honorable Chester B. McMullen, State Attorney, Clearwater, Florida:*

.....
Therefore, in view of the foregoing and in the absence of any conflicting Federal legislation and any direct ruling by the United States Supreme Court overruling the decision in the cases *Skiriotes v. Fla.* 313 U. S. 69; *The Abbey Dodge*, 223 U. S. 166, it is my opinion that the State should continue to regulate the sponge fishing industry within the boundary set up by the Constitution of Florida.

SALT WATER FISHERIES

February 16, 1949—049-61.

OYSTER CONSERVATION COMMISSION—MEMBERS—GOVERNOR'S APPOINTEES—FOUR-YEAR TERM

QUESTION: What is the term of office of members of an Oyster Conservation Commission appointed by the Governor under Section 8, Chapter 24121, Laws of Florida, Acts of 1947?

To: *Honorable R. A. Gray, Secretary of State, Tallahassee, Florida:*

..... in my opinion a member of an oyster conservation commission shall be appointed for a four-year term.

September 2, 1949—049-426.

DEALERS' LICENSES—NET FISHERMEN—OWN CATCH—
SMOKED FISH—SALE—WHOLESALE—RETAIL—
LEGALITY

QUESTIONS: 1. Is a net fisherman required to purchase a retail or wholesale seafood dealer's license if he sells only his own catch of fish any way he can, either retail or wholesale?

2. Is a person selling only smoked fish required to purchase a retail or wholesale seafood dealer's license?

To: *Honorable George Vathis, Supervisor, State Board of Conservation:*

.....
In view of the foregoing, it is my opinion that your first question shall be answered in the negative. Your second question is answered

in the affirmative, except that if a smoked fish is also a cured fish, which is a question of fact to be determined, *merchants* referred to in Section 374.30(3) above shall not be required to pay the retail seafood dealer's license.

October 20, 1949—049-509.

ST. JOHNS COUNTY WATERS—"BAYS" ADDED—SALT WATER
FISH—TAKING REGULATED—CHAPTER 26199, ACTS
1949 REPEALS CHAPTER 17664, ACTS' 1935

QUESTION: What effect upon the taking of salt water fish from the waters of St. Johns County did the enactment of Chapter 26199 have upon prior existing law?

To: *Honorable George Vathis, Supervisor, State Board of Conservation:*

..... The act of 1949 contained an exception which did not appear in the prior act, which permits the taking of flounder with a one prong gig or spear. The act of 1949 added to the designated waters "bays" which were not expressly included in the prior act.

November 3, 1949—049-534.

SEINES AND NETS—ILLEGAL USE OF—CONFISCATION—DE-
STRUCTION—LEE COUNTY—CHAPTER 23951, ACTS
1947—APPLICABLE

QUESTION: When confiscation and destruction of illegally used nets is ordered after being convicted of violating Chapter 23951, should the leads, lines and corks be also destroyed or returned to the owner as set forth in Section 374.38? Which Statute should be followed?

To: *Honorable John K. Woolslair, County Prosecuting Attorney, Ft. Myers, Lee County, Florida:*

..... It is my opinion that Chapter 23951, Acts of 1947, is the controlling law and should be followed in the confiscation and destruction of seines or nets.

December 30, 1949—049-616.

NETS AND SEINES—LEE COUNTY WATERS—REGULATING FISH-
ING—INLAND WATERS—CHAP. 23951, 1947

QUESTION: What interpretation and construction is properly applied to the language employed by the legislature in the enactment of Chapter 23951, Laws of 1947, for the purpose of locating the line dividing the inland waters of Lee County, Florida, and the open waters of that county, to determine the area of salt waters within which the use of certain nets is regulated and prohibited in the taking of salt water fish?

To: *Honorable George Vathis, Supervisor, State Board of Conservation:*

..... Construing the above quoted portion of Section 2, Chapter 23951, Laws of Florida, Acts of 1947, in connection with a map of Lee County,

seems to impel the conclusion that the legislature intended to define the area designated as "inland waters" as being those waters bounded on the south by the south boundary of Lee County, on the east by the mainland of Lee County and inland so far as the salt waters may extend, on the north by the north boundary of the said county, and on the west by a line beginning on the north boundary of said county, one-half mile west of that string of islands hereinafter defined, and running in a southeasterly direction, one-half mile west of that string of islands beginning near Boca Grande and forming the outside boundaries of Charlotte Harbor, Pine Island Sound, San Carlos Bay and Estero Bay, to the south boundary of said county.

April 1, 1950—050-173.

SHRIMP—TAKING—CLOSED SEASON—APALACHICOLA BAY—
FRANKLIN COUNTY—CHAPTER 23952, ACTS 1947
APPLICABLE

QUESTION: What is the closed season for the taking of shrimp in Apalachicola Bay in Franklin County?

To: Honorable George Vathis, Supervisor, Board of Conservation:

Chapter 23952, Acts of 1947, provides a closed season from July 1 to October 1, and from December 1 to April 1 on the taking of shrimp or prawn from the inside waters of Franklin County.

In your memorandum you stated that the waters of Apalachicola Bay are in fact inside waters, and we assume this as a fact for the purposes of this opinion. Therefore, if said waters are in fact inside waters, and in the absence of any statute specifically classifying them otherwise, it is my opinion that the closed season set forth in Chapter 23952, Acts of 1947, applies to the taking of shrimp in Apalachicola Bay in Franklin County.

Section 374.13, Florida Statutes, referred to in your letter, classifies the waters of Apalachicola Bay as outside waters *for the purpose of that section only*. Said section prohibits the taking of shrimp by means other than a cast net in the inside waters.

April 12, 1950—050-188.

WHOLESALE SEAFOOD DEALERS—PERMIT NUMBER ON PACK-
AGED SEAFOOD

QUESTIONS: 1. Is each wholesale seafood dealer required to have a permit number?

2. If so, should said permit number appear on all packaged seafood handled by such dealer?

To: Honorable George Vathis, Supervisor State Board of Conservation:

.....

In view of the foregoing, both of your questions are answered in the affirmative.

October 24, 1950.—050-500.

STATE OF FLORIDA—DRY TORTUGAS WITHIN BOUNDARY
OF—SHRIMP GROUNDS—JURISDICTION—ARTICLE I,
CONSTITUTION OF FLORIDA APPLICABLE

QUESTION: Does Dry Tortugas come within the boundary of the State of Florida? If so, what shrimp grounds would be under the jurisdiction of the State of Florida, taking into special consideration the area between the mainland and the Tortugas Islands?

To: Honorable George Vathis, Supervisor, State Board of Conservation:

..... it is my opinion that Dry Tortugas, being a part of the Tortugas Islands, is within the boundary of Florida. The shrimp grounds lying between the Florida Keys and the Tortugas Islands appear to be under the jurisdiction of the State, except that all shrimp grounds that extend into the Gulf more than three leagues are not to be considered within the boundary of the State of Florida. In measuring the boundary from the Tortugas Islands seaward into the Gulf, it is my opinion that the distance is three leagues the same as if you were measuring from the Gulf coast of the main part of Florida.

SHELL FISH LAWS

February 24, 1950—050-98.

OYSTER CONSERVATION FUND—OYSTER CULTURE WORK—
SHELLFISH APPROPRIATIONS—CHAPTER 24121,
LAWS OF 1947

QUESTION: Was the money provided for in Chapter 24121, Acts of 1947, for oyster culture work, abolished by the law abolishing continuing appropriations?

To: Honorable George Vathis, Supervisor, State Board of Conservation:

.....
..... your question is answered in the affirmative.

CHAPTER XXV PUBLIC HEALTH

STATE BOARD OF HEALTH

March 7, 1949—049-89.

RULES AND REGULATIONS PROMULGATED—VIOLATION—PROSECUTION SUSTAINED

QUESTION: Do the rules and regulations promulgated and adopted by the Florida State Board of Health, under Authority of Chapter 381, Sections 381.49 and 381.59, inclusive, Florida Statutes, 1941, as amended, have such legal effect as to sustain prosecution for violation of such rules and regulations.

To: Mr. T. Harold Williams, County Solicitor, Palm Beach County, West Palm Beach, Florida:

.....

It is my opinion that the violation of any valid rule or regulation adopted under the provisions of Section 381.49, Florida Statutes, 1941, within standards and limitations set up by the legislature, constitutes a misdemeanor, the penalty for which is provided in Section 381.58, Florida Statutes, 1941.

March 10, 1949—049-95.

FLUORIDATION SYSTEM—INSTALLATION PUBLIC HEALTH—PRESERVATION—RESPONSIBILITY—BOARD OF HEALTH

QUESTIONS: 1. What is the responsibility of the Florida State Board of Health as to fluoridation of the public water supplies in a specific community?

2. What action should be taken by the Florida State Board of Health when it receives information that fluoridation of water is being carried on or contemplated by a person, persons, firm, corporation, municipality or public utility operating a public water supply system?

To: Dr. Wilson T. Sowder, M.D. Florida State Board of Health, Jacksonville, Florida:

.....

In answering your first question, it is my opinion that the Florida State Board of Health has no statutory responsibility as to the fluoridation of public water supply systems except to prevent such fluoridation as may be done to public water supplies from becoming a menace to public health.

.....

..... it is my opinion that it would be the duty of the Florida State Board of Health, upon notice from any municipality or other public water supply operator that installation of a fluoridation system was contemplated, to furnish such municipality or operator of a public water supply system a standard which would preserve the public health.

March 18, 1949—049-109.

**OPTOMETRISTS—NO AUTHORITY TO PRESCRIBE NARCOTIC
DRUGS—STATE OF FLORIDA**

QUESTION: May licensed optometrists legally prescribe narcotic drugs in the State of Florida?

To: Mr. M. H. Doss, Director, Bureau of Narcotics, Florida State Board of Health, Jacksonville, Florida:

I beg to advise that they may not and, therefore, the question is answered in the negative.

BUREAU OF VITAL STATISTICS

July 24, 1950—050-359—050-78—050-119.

**SHERIFFS—DEATH CERTIFICATES—ISSUANCE—INQUESTS—
NOTICE AND HOLDING—SECTION 936.03; CHAPTER
328, FLORIDA STATUTES**

QUESTIONS: 1. Does the sheriff have statutory authority to issue death certificate when a person is killed?

2. Is the sheriff authorized to issue a notice of no inquest necessary?

3. Who has the authority to determine whether an inquest is necessary?

To: Honorable W. F. Anderson, County Judge, Levy County, Florida:

.....

In view of the above statutes, it is my opinion that the sheriff has no statutory authority to issue a death certificate for a person who has been killed.

Therefore, your first question is answered in the negative.

.....

In view of the foregoing, it is my opinion that the sheriff has no statutory authority to issue notice of no inquest necessary. Therefore, the answer to your second question is in the negative.

For your additional information, enclosed find copies of opinion 050-78, dated February 18, 1950, and opinion 050-119, dated March 10, 1950, Attorney General Biennial Report 1949-1950.

Your third question is answered in Section 936.03, above. By provisions of said statute, the authority to determine whether an inquest is necessary is vested in the judge, prosecuting attorney or some assistant prosecuting attorney of any county having trial jurisdiction of felonies committed in a county where the dead body of such deceased person is found, in accordance with the provisions therein prescribed.

VENEREAL DISEASES

November 18, 1949—049-546.

**SHERIFF'S FEES—PRISONERS—VENEREAL DISEASES—LAKE
COUNTY JAIL—§384.17, FLORIDA STATUTES—APPLICABLE**

QUESTION: "In the past we have been taking prisoners from the Lake County jail to the clinic building, which is in the same block

as the courthouse, and making our regular charge of \$3.00 for the first and \$1.00 each thereafter, as set forth in the Sheriff's Manual.

"At the request of one of our County Commissioners, the doctor has been coming to the jail to make these examinations and taking blood tests each Monday in order to save paying the sheriff's fee for delivering the prisoners to the Clinic.

"However, we still have to have an extra guard to remove the prisoners from the jail cells to the office room for this clinic service. Are we entitled to a fee for handling prisoners under that set-up the same as we were before?"

To: *Honorable Willis V. McCall, Sheriff, Lake County, Tavares, Florida:*

I know of no provision of the law which provides a fee for a sheriff when a doctor visits a patient in jail simply because the prisoner is moved from his cell to another room in the same building. If such action, however, requires the hiring of additional guards, I believe it is the duty of the county commissioners to provide adequate compensation for such guard or guards.

NUISANCES INJURIOUS TO HEALTH

February 2, 1949—049-37.

FOUL WATER—DUMPING OUTSIDE CITY LIMITS—UNINCORPORATED VILLAGE—§386.04, F. S. '41

QUESTIONS: (1) Does dirty soapy water from a laundry, the wash water from commercial automobile wash racks and the chemicals used to cleanse used automobile parts come within the term "foul water," as provided by Section 386.04, Florida Statutes, 1941?

(2) If such water is dumped within a thickly populated area immediately outside the city limits of a city but adjacent thereto, is such an area an "unincorporated village" as contemplated by Section 386.04, Florida Statutes, 1941?

To: *Dr. H. A. Sauberli, Health Officer, Leon County Health Unit, Tallahassee, Florida:*

A developed section consisting of homes and business establishments, would constitute a village or as otherwise described by Section 386.04, Florida Statutes, 1941, as an "unincorporated village" and your second question is therefore answered in the affirmative.

COUNTIES AS MOSQUITO CONTROL DISTRICTS

March 17, 1950—050-130.

ELECTIONS—COMMISSIONERS OF EAST VOLUSIA COUNTY ANTI-MOSQUITO DISTRICT—ONLY FREEHOLDERS QUALIFIED TO VOTE

QUESTIONS: 1. Should candidates for any of the offices of commissioner of East Volusia County Anti-Mosquito District, be nominated and/or elected in the 1950 primaries and/or general election?

2. At an election of commissioners for the above district is there any procedure to be followed with reference to getting names of candidates for any such offices on the election ballot?

3. Must an elector be a freeholder to be eligible to vote at such an election?

To: Honorable Jess Mathas, Clerk Circuit Court, Volusia County, De-Land, Florida:

.....

By Section 27 of Chapter 18963, the act was not to become effective until approved at a referendum election to be called by the board of county commissioners of said county within 90 days from the passage of the act. The act was approved June 11, 1937. It is here assumed that within said period of time there was a referendum election and that a majority of the freeholder electors eligible to vote therein voted in favor of the act. It is further assumed that the first board was appointed by the Governor in 1937 within the time set forth in Section 3 of the act. This opinion is conditioned upon such assumptions.

.....

(1) Conditioned as above set forth, it would seem that commissioners of this district from county commissioners' districts 4 and 5 in Volusia County should be elected at the general election this year to take office for four-year terms beginning January 1, 1951. This is not an election which permits the qualifying of candidates in the primaries. It is a freeholder election. The names of the candidates to be voted for will not appear on the general election ballot but upon a special ballot to be voted only by freeholders in pursuance of Section 13 of Chapter 18963, such freeholder's election to be held at the same time as the general election.

(2) There appears to be no provision of law providing for the printing of the names of candidates for these officers on the ballot to be used at such election. In the absence of such provisions, the ballot will be provided to permit the writing in of names of candidates qualified according to the act.

(3) As mentioned above, only freeholders of said district according to the last preceding assessment made by said county in said district shall be qualified and permitted to vote in such an election.

COUNTIES AS MOSQUITO CONTROL DISTRICTS

November 14, 1950.—050-523.

PINELLAS COUNTY ANTI-MOSQUITO DISTRICT—TRUCKS AND CARS—LIABILITY INSURANCE NOT REQUIRED

QUESTION: The Pinellas County Anti-Mosquito District was created under Chapter 13570, Acts of 1929 (Chapter 388, Florida Statutes). Is it necessary for said District to carry liability insurance on its trucks and cars?

To: Mr. R. P. Templeton, Chairman, Pinellas County Mosquito Control Board:

.....

..... I do not believe it to be necessary from a legal standpoint

for you to buy liability insurance. However, from the standpoint of protecting the public, I believe it would be advisable for your Board to secure special legislation authorizing your Board to take out liability coverage. Several counties have done this.

MOSQUITO CONTROL DISTRICTS

June 27, 1950—050-319—050-130.

EAST VOLUSIA COUNTY ANTI-MOSQUITO DISTRICT—COMMISSIONERS—MANNER OF ELECTION, CHAPTER 18962, ACTS 1937

QUESTION: Since 1944, through inadvertence, no election has been held for the offices of commissioners of East Volusia County Anti-Mosquito District as prescribed in Chapter 18962 of the Laws of 1937. Accordingly, in order to comply with the requested as to the proper manner of electing said commissioners in the next or subsequent general election.

To: Honorable J. Elton McCardell, Attorney, Board of Commissioners, East Volusia County Anti-Mosquito District, Daytona Beach, Florida:

.....

In summary then, in order to provide for the proper appointment and/or election of commissioners in the future, the following solution is recommended:

1. At the next general election (November 1950), candidates for the offices of commissioner for both the Fourth and Fifth Districts should be elected for a four year term, commencing 1 January 1951, for the reasons set forth in my opinion of 17 March 1950.
2. Request the Governor to appoint a commissioner-at-large for the remainder of the term expiring 1 January 1953, as discussed above.
3. At the general election of 1952, elect a commissioner-at-large for a four year term, commencing 1 January 1953.

The above procedure should result in the realignment of the Board in the order contemplated by Chapter 18963, Laws of 1937, and will provide the staggered terms of office prescribed by the statute.

ALTERNATE SYSTEM OF CREATING MOSQUITO CONTROL DISTRICTS

February 23, 1949—049-88.

HOMESTEADS—ASSESSMENTS FOR MOSQUITO CONTROL—ILLEGAL

QUESTION: May the assessments made by a mosquito control district, for mosquito control pursuant to Chapter 390, Florida Statutes, be legally levied against homesteads, within such district, entitled to exemption under Section 7, Article X, of the State Constitution?

To: *Honorable Frank D. Upchurch, Attorney at Law, St. Augustine, Florida:*

.....

In the light of the above and foregoing observations I am of the opinion that the above question should be answered in the negative.

TUBERCULOSIS SANATORIUM

October 7, 1949—049-477.

STATE TUBERCULOSIS BOARD—POWER TO CONSTRUCT AND EQUIP TUBERCULOSIS SANATORIA—WHEN APPROPRIATIONS ARE PROVIDED

QUESTION: Does the state tuberculosis board have authority to construct and equip tuberculosis sanatoria in the state of Florida when and if appropriations are made and revenue is provided for this purpose?

To: *Mr. L. L. Lanier, Administrator, State Tuberculosis Board:*

.....

..... therefore your question is answered in the affirmative.

April 12, 1950—050-187.

STATE TUBERCULOSIS BOARD—CONTRACTS—BIDS—ADVERTISEMENT NOT REQUIRED

QUESTION: May the State Tuberculosis Board award a contract to a concern which is not the lowest bidder, but has the approval of the Board as to the quality and desirability?

To: *Honorable L. L. Lanier, Administrator, State Tuberculosis Board:*

.....

Your question is answered in the affirmative.

May 8, 1950—050-231.

TUBERCULOSIS SANATORIA—FLORIDA RESIDENT ENGAGED FOREIGN SERVICE—NATURALIZED WIFE ENTITLED ADMISSION—§392.07, FLORIDA STATUTES—ORANGE COUNTY

QUESTION: Is the naturalized wife of a citizen and resident of Orange county, Florida, who is and has been engaged in foreign service for the United States Department of State and assigned to duty in Columbia, South America, since prior to their marriage in 1946, entitled to admission to one of the state tuberculosis sanatoria?

To: *State Tuberculosis Board, Jacksonville, Florida:*

.....

In the light of the above and foregoing observations we are of the opinion that the wife in question has been a bona fide and continuous resident of the State of Florida for more than a year last past within the intent and meaning of Section 392.07, Florida Statutes.

October 2, 1950—050-474—050-187.

STATE TUBERCULOSIS BOARD—FURNITURE MANUFACTURER—
DUPLICATION—INCREASE COSTS—CONTRACTS AWARDED

QUESTION: May the State Tuberculosis Board award a contract to a furniture manufacturer, which contract calls for the duplication of furniture previously purchased from the same company, but at an increase of 5%, due to current higher production costs?

To: *Honorable Louie Bandel, Member, State Tuberculosis Board:*

Although it is not clearly indicated by your letter, I assume that your question is primarily concerned with whether or not in awarding such contract, competitive bids should be obtained by the Board.

A previous opinion of this office, No. 050-187, dated April 12, 1950, rendered to the Honorable L. L. Lanier, Administrator, State Tuberculosis Board, would appear to answer your instant question. I enclose a copy of that opinion for your information.

On the basis of this prior opinion, and subject to the same recommendations made in that opinion, I see no legal objection to the awarding of the subject contract by the State Tuberculosis Board, under the circumstances outlined in your letter. Your question is therefore answered in the affirmative.

October 18, 1950.—050-494.

TUBERCULOSIS SANATORIUM—ESCAPED PATIENT—RETURN—
RESPONSIBILITY OF—\$392.17-\$392.23, FLORIDA STATUTES

QUESTION: Where a person is committed by the County Judge to a Tuberculosis Sanatorium, under the provisions of Section 392.18, Florida Statutes, (Chapter 25241, Acts of 1949), and said patient escapes from the sanatorium and returns to the county from which he was committed, what procedure should be followed in returning said patient to the sanatorium?

To: *Honorable James C. Gwynn, County Judge, Leon County, Tallahassee, Florida:*

.....

As the custody of such patients becomes the responsibility of the sanatorium to which that person is committed, in the event such person escapes from the sanatorium it thereby becomes the responsibility and duty of the authorities of said sanatorium to immediately take steps to effect the return of such patient to the sanatorium. In order to accomplish this purpose the governing authorities of the sanatorium are authorized to appoint agents to act in their behalf in accomplishing the return of such escaped patient. In such a situation it would be appropriate for any sheriff within this state to act as such an agent in returning the patient to the sanatorium. In such event the sheriff would be entitled to his custody fees which should be paid by the authorities of the sanatorium from funds appropriated for their use in such matters.

FLORIDA STATE HOSPITAL

March 4, 1949—049-90.

FORMER PUBLIC CHARGES OF OTHER STATES—ENTRANCE REQUIREMENT—RESIDENT STATE OF FLORIDA FOR ONE YEAR YEAR

QUESTION: Fourteen years ago, the then ten year old son of parents who were residents of New Jersey was placed in New Jersey State Colony, Lisbon, New Jersey, a state institution for feeble-minded boys. In 1942 the parents established their home in Florida, and they obtained permission of such institution to bring their son to Florida with them. Since at one time this son was a public charge of the State of New Jersey, would that fact render him ineligible for commitment to Florida State Hospital?

To: Dr. J. H. Therrell, Superintendent, Florida State Hospital, Chattahoochee, Florida:

.....

If the son of these parents has been an actual bona fide resident of this State continuously for one year last past, the fact that at one time he was an inmate of the New Jersey institution mentioned would not render him ineligible for admission to Florida State Hospital.

May 16, 1949—049-216.

INSANE WOMAN—NAME AND RESIDENCE UNKNOWN—ELIGIBLE—COMMITMENT FLORIDA STATE HOSPITAL AS "JANE DOE"

QUESTION: In a Florida city a woman, obviously insane, has been taken into custody by the proper authorities. This incompetent is apparently unable to inform the authorities concerning her name or place of residence and such are unknown to said authorities. Effort is being made to determine her identity. If further information is not forthcoming concerning this woman: (1) properly may she be committed to Florida State Hospital in view of the provisions of Section 394.27, Florida Statutes, 1941? and (2) if she is committed such institution may she be designated as "Jane Doe?"

To: Dr. J. H. Therrell, Superintendent, Florida State Hospital:

.....

In my opinion the above questions properly are answered as follows:

(1) In the absence of further information concerning this woman she should be presumed to be a resident of this state and to meet the requirements of Section 394.27. This conclusion derives from the very practical aspects of the situation presented; and is supported by the presumption of fact, easily disturbed it is true, that where domicile is unknown, a person is domiciled where he is found, Kennan, Residence and Domicile, Page 105, Section 50.

(2) If otherwise eligible for commitment to Florida State Hospital, and in the absence of the name of this woman being known, it appears that properly she may be committed to the institution under the name of "Jane Doe", name otherwise unknown.

September 23, 1949—049-454.

INCOMPETENCY—EXAMINING COMMITTEE AS WITNESSES—
COMPENSATION ALLOWED—CHAPTER 25241, ACTS 1949

QUESTION: How are the fees of the examining committee, the two physicians and the one intelligent citizen, appointed by the county judge under Chapter 25241, laws of Florida, acts of 1949, to examine the patient, to be calculated?

To: *Honorable J. M. Hearn, County Judge, Live Oak, Florida:*

.....
..... In the light of these observations we are of the opinion that the committee should be compensated as witnesses in the case.

September 29, 1949—049-473.

MALPRACTICE—MEDICAL STAFF—MEMBERS SUBJECT TO SUIT
—CHIEF PHYSICIAN NOT RESPONSIBLE

QUESTIONS: 1. Are members of the medical staff of Florida State Hospital subject to suit for malpractice?

2. Is the Chief Physician at Florida State Hospital legally responsible for malpractice of a member of the medical staff?

To: *Dr. J. H. Therrell, Superintendent, Florida State Hospital:*

.....
In view of the foregoing, in my opinion the above questions are answered as follows:

1. The question is answered in the affirmative. That is to say that members of the medical staff of Florida State Hospital are subject to suit for malpractice in the same manner as though they were practicing independently their professions of physicians or surgeons.

2. Since the chief physician at the hospital has supervision and direction of the other members of the medical staff, reasonable diligence is required of him to see that the requisite professional skill is employed at all times by those under him. If he exercises such diligence, he would not be legally responsible for the act of a member of the staff so negligent as to constitute malpractice, if he, the chief physician, did not participate therein or direct the doing of such act and concerning which act he was possessed of no prior knowledge.

October 27, 1949—049-540.

COMMISSIONERS STATE INSTITUTIONS, BOARD OF—PROPOSED
RECIPROCAL AGREEMENT—NORTH CAROLINA—
FLORIDA—INCOMPETENTS—EXCHANGE OF

QUESTION: Should the Board of Commissioners of State Institutions of Florida enter into a proposed agreement with the North Carolina Hospital Board of Control of the State of North Carolina, providing for the exchange between such states of incompetents who are residents of such respective states and containing certain provisions hereinafter set forth?

To: *Honorable Frank S. Wright, Secretary, Board of Commissioners of State Institutions, CAPITOL:*

.....

To the extent that paragraph III above goes beyond the provisions of paragraph V, the relationships mentioned will not in Florida provide constructive residence. Hence, this paragraph offends Section 394.27 and should be deleted from the agreement. Therefore, in my opinion, for the reasons set forth, the proposed agreement is lawful, provided there be inserted the word "one" immediately preceding the word "years" in above quoted paragraph II and further provided that there be deleted from the agreement all of paragraph III.

June 6, 1950—050-274—049-216.

FLORIDA STATE HOSPITAL—INSANE PERSONS—COMMITMENT
—RESIDENCE REQUIREMENTS—§§919.11, 394.27,
FLORIDA STATUTES

QUESTION: Does the residence requirement set forth in Section 394.27, Florida Statutes, 1949, as prerequisite to commitment to or receipt of a patient at Florida State Hospital apply to an acquitted insane defendant committed to the institution under Section 919.11, Florida Statutes, 1949?

To: *Dr. J. H. Therrell, Superintendent, Florida State Hospital:*

.....

..... Hence, the above question is answered in the negative.

August 25, 1950—050-420.

STATE INSTITUTIONS, BOARD OF COMMISSIONERS—RAIFORD—
CRIMINALLY INSANE PERSONS—TEMPORARY
TRANSFER ALLOWED

QUESTION: Where existing facilities at Florida State Hospital, Chattahoochee, are determined to be totally inadequate and unsafe for the incarceration of certain criminally insane patients known to be dangerous, which persons have been previously committed to that institution, may the Board of Commissioners of State Institutions effect a temporary transfer of such persons to the state prison at Raiford for safekeeping, pending completion of a building at Florida State Hospital, designed for proper confinement of these patients?

To: *Honorable Frank S. Wright, Secretary, Board of Commissioners of State Institutions:*

.....

..... I take the view that even though criminally insane persons have by court order been committed to the Florida State Hospital, where the Board is satisfied by competent proof of the existence of the following: (1) that confinement at the hospital cannot be made secure by some arrangement readily available, and (2) that continued confinement of such persons at the hospital will be imminently dangerous to the peace and safety, not only of other patients and the employees, but to society in general, then the Board could by reason of the extreme emergency, transfer these patients to Raiford for safekeeping for a reasonable time pending completion of the building for proper maintenance and care of the criminally insane.

Hence, as qualified above, the question is answered in the affirmative.

December 29, 1950.—050-583.

**COUNTY JUDGES—ADJUDICATION OF MENTAL INCOMPETENCY
—SECTIONS 394.20—394.22, FLORIDA STATUTES APPLICABLE**

QUESTION: Where, in a proceeding pursuant to Sections 394.20-394.22, Florida Statutes, 1949, the Examining Committee concludes that the subject of the inquiry is not mentally incompetent, but the County Judge is convinced from the testimony of the numerous witnesses testifying at the hearing that the subject is incompetent, may the County Judge properly adjudicate the subject of the inquiry to be mentally incompetent?

To: Honorable Harvey E. Page, County Judge, Escambia County, Pensacola, Florida:

.....

I take the view that the report of the Examining Committee is to be given such weight as the judge may deem proper, it being advisory in nature. Should the judge determine, from all competent evidence introduced at the hearing, that the subject of the inquiry is mentally incompetent, within the provisions of Section 394.20-394.22, Florida Statutes, 1949, he may properly make an adjudication to that effect, notwithstanding the contrary report of the Examining Committee. The question is answered accordingly.

UNIFORM NARCOTIC DRUG LAW

September 22, 1949—049-448.

**STATE BOARD OF HEALTH—BUREAU OF NARCOTICS—DUTY—
AUTHORITY TO FURNISH HOSPITALS WITH INFOR-
MATION—PHYSICIANS—DRUG ADDICTS**

QUESTION: May the Bureau of Narcotics furnish information to private or public hospitals, on their written request, regarding whether or not a physician who is an applicant to practice in said hospital has ever received treatment for drug addiction under commitment or court order?

To: Mr. M. H. Doss, Bureau of Narcotics, State Board of Health, Jacksonville, Florida:

.....

If a person has been committed by court order for compulsory drug addiction under Section 398.18, Florida Statutes, or similar provisions, the court record of such commitment is a public record and can be examined by persons having a legitimate purpose to do so.

While I do not believe you are permitted to furnish certified copies of affidavits that your agents might file in connection with a case under Section 398.18, supra, I am of the opinion that you not only have the authority but that it is your duty as director of a bureau of the State Board of Health to furnish information from your official files to recognized authorities of private and public hospitals, upon their request, regarding the drug addiction of an appli-

cant to practice medicine in said hospital, if such information has been substantiated or proved to be correct by proper court proceedings.

The only basis for such a request on the part of such hospital is to protect their patients and to protect the hospital and the main reason for the existence of the State Board of Health is to preserve the public health.

April 11, 1950—050-185.

STATE PRISON—SUPERINTENDENT—CHIEF PHYSICIAN—NARCOTIC PATIENTS—OCCUPATIONAL THERAPY—CONFINEMENT—AUTHORITY TO PRESCRIBE—
§398.18, FLORIDA STATUTES

QUESTION: Do the superintendent of the state prison and the chief physician of the state prison hospital have the authority to prescribe occupational therapy and confinement when necessary for "narcotic patients," committed to said institution under the provisions of Section 398.18, Florida Statutes?

To: Honorable M. H. Doss, Director, State Bureau of Health:

.....

It is therefore my opinion that your question should be answered in the affirmative.

CHAPTER XXVI

SOCIAL WELFARE

STATE BOARD OF PUBLIC WELFARE

January 21, 1949—049-25.

DISTRICT WELFARE BOARDS—INCREASE AND DECREASE IN NUMBER—CHANGE IN BOUNDARIES

QUESTION: Would an amendment of Section 409.08, Statutes, 1941, authorizing limited increase or decrease in the number of district welfare boards, or change in their boundaries, or both, by recommendation of the State Welfare Board and order of the Governor, be valid?

To: Honorable David J. Lewis, Esq., Attorney for State Welfare Board, 301-2, Graham Building, Jacksonville 2, Florida:

.....

The legislature cannot lawfully delegate its legislative authority. It is my opinion, however, that a valid act could be written consolidating present districts or creating additional districts, or changing district boundaries, upon the existence of certain facts or upon the happening of certain conditions, the existence of which facts or conditions would be left to the determination of the State Welfare Board and the Governor.

May 16, 1949—049-213.

LEGISLATIVE COMMITTEE—LIST OF OLD AGE RECIPIENTS— RIGHT QUESTIONED BY FEDERAL AUTHORITIES

QUESTIONS: 1. On April 21 a Senate Investigation Committee requested this agency to supply it with a list of names of old age assistance recipients in Sumter, Alachua, Bradford and Suwannee Counties. Was our compliance with that request lawful?

2. Under dates of May 11 and 12 the Senate Investigating Committee requested this agency to supply a list of old age assistance recipients in four additional counties. May we supply that information?

To: Honorable Sherwood Smith, Commissioner, State Welfare Board, Jacksonville, Florida:

..... I cannot say that the legislative committee's request for a list of old age assistance recipients in the four named counties instead of one county was unreasonable. It is my opinion that under all the circumstances your supplying the list of old age assistance recipients in the four counties as requested by the Senate Investigating Committee on April 21 was not a violation of the Federal act or regulations requiring that records be held confidential.

..... It would appear that a list of old age assistance recipients in four counties already supplied would be ample for any study which

might need to be made; it is my opinion that it would be unlawful and that you should not endanger the continued receipt of Federal funds by supplying additional names of recipients in other counties without the prior approval of the Federal authorities.

August 2, 1949—049-355.

**DEPENDENT CHILDREN—ADC FUNDS—PROPORTIONATE PART
RELEASED—MAY BE USED IN CASES NOT ELIGIBLE
FOR FEDERAL MATCHING**

QUESTION: In Item 45-d of Chapter 25370, the General Appropriation Act of 1949, there was given to the State Welfare Board a lump sum appropriation for aid to dependent children. For the first quarter of the current year there was a lump sum release by the Budget Commission of one fourth of that amount, less twenty-five percent. May any part of the released funds be used for aid to dependent children in cases not eligible for Federal matching?

To: Honorable Sherwood Smith, Commissioner, State Welfare Board:

.....

It is my opinion that you may use a proportionate part of the released funds, \$28,125.00, for aid to dependent children in cases not eligible for Federal matching.

August 8, 1949—049-364.

**DEPENDENT CHILDREN—NO AUTHORITY FOR STATE AID TO
UNBORN CHILD—REQUIREMENTS—\$409.18,
FLORIDA STATUTES**

QUESTION: Under its program of aid to dependent children, may the State Welfare Board disburse funds to a mother for her unborn child, in cases of need?

*To: Honorable Sherwood Smith, Commissioner, State Welfare Board,
Jacksonville, Florida:*

.....

An unborn child does not qualify under those requirements. Accordingly, there appears to be no authority to give State aid in such cases, even though Federal matching funds would be available.

August 11, 1949—049-369.

FLORIDA COUNCIL FOR THE BLIND—TORTS—NOT LIABLE FOR

QUESTIONS: 1. Is the Florida Council for the Blind liable for personal injury or property damage which might be caused by a truck owned and operated by the Council?

2. Would the Council be liable for injury to any of its students who, while being transported, might be injured in a truck owned and operated by the Council?

To: Florida Council for the Blind, Tampa, Florida:

The Florida Council for the Blind is a State agency and as such is not liable for its torts. I concur in the opinion of October 7, 1946, number 046-416, referred to in your letter. Both of your questions are answered in the negative.

September 22, 1949—049-447.

**FLORIDA COUNCIL FOR THE BLIND—PUBLIC BUILDINGS—
VENDING MACHINES—INSTALLATION—OFFICIALS
AUTHORIZED TO PERMIT—CHAPTER 25141,
ACTS '49**

QUESTION: What position should the officials in charge of public buildings take under the provisions of Chapter 25141-(No. 145) House Bill No. 304, Acts of 1949, where there are vending machines already installed by various groups or organizations other than the Florida Council for the Blind?

To: Mr. H. C. Crawford, General Manager, Vending Stand Department, Florida Council for the Blind:

.

In answering your question therefore, I can only say that public officials are without doubt authorized to permit vending machines or stands operated by the Florida Council for the Blind, to be installed in public buildings if they desire to do so. I know of no general statutory authority which would allow any other group or person to do the same thing. This would not necessarily mean however, that public officials are prohibited from allowing other groups from installing stands or machines and I could not attempt to render an opinion which would affect the rights and duties of said public officials unless they themselves called upon me to do so.

January 12, 1950—050-17.

**COUNCIL FOR THE BLIND—PLEDGING STATE CREDIT—JOINING
CHARTERED CORPORATION—§10, ART. IX, FLA. CONST.**

QUESTIONS: 1. Can the Florida Council for the Blind officially be a member of the Florida Cooperative for the blind, a non-profit corporation existing to distribute and sell products made by the blind of Florida?

2. May Council employees be officers or members of the board of directors of such a corporation?

3. If the Cooperative is not incorporated, may the Council as a state agency undertake active participation in its objectives?

To: W. R. Young, Director, Florida Council for the Blind:

. Section 10, Art. 9, of the Florida Constitution would prevent the Florida Council for the Blind participating as a member of the Florida Cooperative for the Blind in any official capacity, whether it is incorporated or not.

This does not, of course, prevent the Florida Council for the Blind from cooperating with the Florida Cooperative for the Blind and extending assistance to it through the use of its facilities and employees.

By the same token, I do not believe that an employee of the Florida Council for the Blind could officially represent that agency as a member of the Florida Cooperative for the Blind. He could, however, belong to the Florida Cooperative whether incorporated or not in a purely individual capacity and as such could serve as a director or

officer of the Florida Cooperative for the Blind so long as the interest of the Florida Council for the Blind and the Florida Cooperative for the Blind are not in conflict.

July 10, 1950—050-368.

**STATE WELFARE BOARD—EMPLOYEE SALARY RESTRICTIONS—
§409.10, FLORIDA STATUTES—AMENDMENT**

QUESTION: "Do salaries specified in an Appropriation Act of the Legislature supersede any previous legislation fixing those salaries, such as is described in Section 409.10 of the State Welfare Act?"

To: Honorable Sherwood Smith, Commissioner, State Welfare Board:

.....

In recent years it has been the custom to include in the General Appropriation Act a provision substantially as follows: "Where the salary of any officer or employee of the State has not been changed by any act of the Legislature of, the appropriation for salaries shall control the salary or compensation to be paid such officer or employee."

Assuming that such a provision should be included in the General Appropriation Act for the biennium in question, it is my opinion that the restrictions contained in Section 409.10, quoted above, would be suspended during the biennium, provided (1) all salaries in excess of \$325.00 are itemized in the State Welfare Budget submitted by the Budget Commission to the Legislature and the full amount appropriated by the Legislature without any reduction whatever, or (2) all salaries of \$325.00 or more are itemized in the General Appropriation Act. In either event, care should be taken to include in such itemized list those positions now carrying a salary of more than \$325.00, as well as those to be increased.

The proposed procedure for increases in salaries is not recommended, because you will be confronted with the same difficulty at each session of the Legislature, and because any material change in the above procedure might defeat your purpose. On the other hand, if for any reason it should not be possible to get a satisfactory amendment of Section 409.10, the above procedure would accomplish the purpose for the biennium. See *State ex rel. Williams v. Lee*, 191 So. 697, and *State ex rel. Knott v. Lee*, 197 So. 681.

October 19, 1950.—050-495.

**DISTRICT WELFARE BOARD MEMBERS—CONSTITUTIONAL
AMENDMENT PENDING—1945 STATE CENSUS GOVERNS
§409.09, FLORIDA STATUTES**

QUESTION: May the provisional figures for the 1950 census be used as a basis in determining the number of board members to which each county is entitled on the District Boards of the State Welfare Board?

*To: Honorable Sherwood Smith, Commissioner, State Welfare Board,
Jacksonville, Florida:*

.....

The last state census is the census of 1945. In the general

election, next month, the people will vote on a constitutional amendment which, if adopted, will make the federal census, when final, the state census also. Until that constitutional amendment shall have been adopted and the 1950 census becomes official, the 1945 state census will govern.

DEPENDENT AND DELINQUENT CHILDREN

April 12, 1949—049-156.

FLORIDA INDUSTRIAL SCHOOL FOR BOYS—ESCAPEES—LARCENY—DETERMINING AUTHORITY OF SUPERINTENDENT, COUNTY JUDGE, CIRCUIT JUDGE

QUESTIONS: 1. Did said County Judge's order constitute a binding disposition of the said offense of auto larceny so as to preclude further prosecution therefor in the Circuit Court?

2. After the boys were thus returned to the Industrial School, did the Superintendent of said school have the lawful right to hold the boys and to decline to permit the sheriff to take them under the Circuit Court's *capias*?

3. The boys having been taken into custody by the sheriff under the Circuit Court's *capias*, does the Superintendent of the Industrial School have the right to regain custody of the boys from the sheriff by *habeas corpus*?

To: Honorable Arthur G. Dozier, Superintendent, Florida Industrial School for Boys, Marianna, Florida:

It is my opinion that these questions are properly answered in the negative.

I do not think that the County Judge's order had the effect of disposing of the larceny charge or of precluding the Circuit Court from later charging the boys with the larceny and taking them into custody and holding them for trial.

May 27, 1949—049-230.

COMMITMENT TO FLORIDA INDUSTRIAL SCHOOL FOR BOYS—FELONY CHARGED BUT NO CONVICTION—RIGHT TO HOLD

QUESTION: Where a boy has been adjudged to be a delinquent child and committed to the Florida Industrial School for Boys by a County Judge, upon the basis of having committed a felony, without the boy having appeared before a Circuit Court, a Criminal Court of Record or a court of Record and there having been determined to be guilty of said felony, can the Superintendent of said School lawfully hold said boy under said commitment?

To: Honorable Arthur G. Dozier, Superintendent, Florida Industrial School for Boys, Marianna, Florida:

.....

Consequently, the answer to your question is: No.

.....

August 30, 1949—049-417.

RUNAWAY CHILDREN NOT ALWAYS DEPENDENT OR DELIN-
QUENT—MARRIAGE VALID—§§415.01, 415.02, FLORIDA
STATUTES

QUESTIONS: 1. Is a girl under the age of eighteen years, who runs away from her home in this state without her parents' consent for the purpose of marriage, a delinquent child within the purview of Section 415.01, Florida Statutes, so as to give juvenile courts in this state jurisdiction over her?

2. Where a girl under the age of eighteen years is taken from her home in this state, without her parents' consent, for the purpose of marriage, is the person so taking her away from home for such purpose guilty of violating Section 415.02, Florida Statutes, or any other statute or law of this state?

3. Where a boy under the age of eighteen or a girl under the age of sixteen runs away from their home in this state and without the consent of their parents gets married in another state, after giving a fictitious age of majority, is the marriage of such minor valid in this state?

4. Where a boy under the age of eighteen or a girl under the age of sixteen runs away from their home in this state, without the consent of their parents or other guardian, may process be issued for their detention and return to their home or other places designated by a court of competent jurisdiction?

5. If the fourth question above is answered in the affirmative, by what court should such process be issued in this state?

To: Honorable Paul Kickliter, Judge, Juvenile Court, Tampa, Florida:

..... These observations seem to indicate that the facts stated in the first question are probably, with themselves, insufficient to render the girl therein mentioned a delinquent child within the purview of section 415.01, Florida Statutes.

The facts set out in the second question being substantially the same as those set out in the first question it would doubtless follow that there being grave doubts about the delinquency of the girl therein mentioned that the person taking her away from home for the purpose of marriage would not be guilty of violating Section 415.02, Florida Statutes, unless there were other circumstances involved in the case.

The question of the validity of a marriage. From these observations it seems that any such marriages entered into in other states should be presumed to be valid and binding in this state until declared invalid by some court of competent jurisdiction. They do not appear to be void per se. Unless the marriage is void per se under the laws of the state where entered into it should not be considered as void per se in this state; it should be considered valid until set aside by a court of competent jurisdiction, which would probably be a court of equity. This seems to answer the third question.

.....

..... In the light of these observations no definite answer may be made to the fourth and fifth questions above.

With reference to juvenile courts (special courts in some counties and the county judge in others); these courts appear to be courts of special and limited jurisdiction, which jurisdiction is usually strictly construed (In Re. Whetstone, 137 Fla. 712, 188 So. 576). Juvenile courts are not criminal courts. Unless given jurisdiction by special statutes creating them it is doubtful that juvenile courts have jurisdiction to issue process for taking runaway children into custody for the purpose of returning them to their parents; runaway children are not always delinquent or dependent children.

January 4, 1950—050-19.

JUVENILE COURT—JURISDICTION IN FELONY—MINOR CHILDREN—CHAPTER 415, FLORIDA STATUTES

QUESTION: 1. Where two boys, aged sixteen and twenty years, are arrested on charges of breaking and entering a building in Pinellas county, with the intent to commit a crime (probably burglary), does the Juvenile Court of that county have jurisdiction to try and dispose of such charge?

2. If the said Juvenile Court is without jurisdiction to try and dispose of such charge, then what court has jurisdiction?

To: Hon. Edward E. Patrick, Pinellas County Probation Officer:

.....

We are, therefore, of the opinion that the Circuit Court, and not the Juvenile Court, has authority to try the sixteen year old boy charged with burglary and to deal with him in any of the modes authorized under Section 415.21, Florida Statutes, as amended; and that the Juvenile Court acquired no jurisdiction in the matter unless and until the child is remanded to said court by the Circuit Court.

As to the twenty year old boy involved in the burglary the Circuit Court appears to have the exclusive jurisdiction over him. He may not be treated as a juvenile, even by the Circuit Court, and may not be remanded to the Juvenile Court as the sixteen year old boy might be.

April 18, 1950—050-200.

JUVENILE AND DOMESTIC RELATIONS COURT—DEPENDENT AND DELINQUENT CHILDREN—OVER SEVENTEEN—NO JURISDICTION—DADE COUNTY

QUESTION: May the Juvenile and Domestic Relations Court of Dade county, Florida, commit delinquent children to the proper Florida industrial school for a period of time extending beyond their seventeenth birthday?

To: Honorable Walter H. Beckham, County Court House, Miami, Florida:

.....

In the light of these observations we feel that the above question should be answered in the negative.

PLAYGROUND AND RECREATION CENTERS

August 18, 1949—049-387.

SCHOOL PROPERTY—PUBLIC SWIMMING POOL—COUNTY AND CITY MAY CONSTRUCT—AGREEMENT NOT TO CONFLICT WITH CHAPTER 418

QUESTION: May a county and city jointly construct a public swimming pool on school property?

To: *Honorable A. N. Watson, Mayor, Monticello, Florida:*

This question was answered in part by Attorney General's opinion dated July 9, 1945, 045-201, Biennial Report of Attorney General 1945 page 552. I concur in this opinion. . . .

Specifically, the question could not be answered until the terms of the proposed agreement are decided.

Subject, however, to the above reservation and assuming that the agreement would not be in conflict with Chapter 418, Florida Statutes, or any of the provisions of the Florida School law, I believe that your question should be answered in the affirmative.

February 9, 1950—050-59.

CONVEYANCE OF SCHOOL PROPERTY—USE AS COMMUNITY CENTER—COUNTY COMMISSION, POWERS—§418.02, F. S. '41

QUESTION: Does the board of county commissioners of DeSoto county have authority to accept conveyance of certain school buildings, conditioned to maintain them purely as community centers?

To: *Mr. J. H. Treadwell, Jr., Attorney Board of County Commissioners, DeSoto County, Arcadia, Florida:*

Many of the so called community centers that have been established in this state have one or more of the following facilities: swimming pools, outdoor tennis, handball and other courts and other facilities for outdoor sports; basket ball and other courts and facilities for indoor sports; and auditoriums and other facilities for public gatherings, meetings and conventions, and places where educational, moral, musical, labor and industrial questions may be discussed. Such facilities may also be used for assemblages within the purview of Section 15 of the Declaration of Rights of the state constitution. Many of these community centers serve for both physical and mental recreation of the citizens and residents of the community. School grounds and buildings, if such as may be used for, or may be converted so as to be used for, any of the purposes aforesaid, may be acquired by the boards of county commissioners and used by them for community centers. No such property should be accepted unless the title is sufficient to protect the county against adverse claimants.

The above question, if the grounds and buildings therein mentioned meet the above conditions and requirements, should be answered in the affirmative.

FLORIDA STATE IMPROVEMENT COMMISSION

May 26, 1950—050-259.

**FLORIDA STATE IMPROVEMENT COMMISSION—OBLIGATION—
STATUS OF—CHAPTER 420, FLORIDA STATUTES**

QUESTION: What is the status of obligations issued by the Florida State Improvement Commission in connection with projects established, operated or maintained by it under Chapter 420, Florida Statutes, and statutes and laws which supplement said chapter?

To: Honorable Fuller Warren, Governor of Florida:

Under the plan of operation set up for the operation of the Florida State Improvement Commission, under the purview of Chapter 420, Florida Statutes, each and every project or group of projects, or buildings or group of buildings, constructed, purchased or improved by the commission, is treated as a separate and distinct project, with the rents, tolls or fees to be derived from such projects or buildings separately pledged for the payment of the revenue bonds, notes or certificates issued by the commission in connection with the construction, purchase or improvement thereof. The purchasers and holders of any issue of such revenue bonds, notes or certificates look to the rents, tolls or fees to be derived from a particular project or building, or group of projects or buildings for the payment thereof and not to the State or one of its agencies. Each particular building or project, or group of buildings or projects, as may be described in the proceedings by which any issue of revenue bonds, notes or certificates may be issued, furnishes the revenue, in the nature of rents, tolls or fees, to which the holders of such bonds, notes or certificates must look for payment. These rents, tolls and fees constitute the primary fund from which the said bonds, notes or certificates shall be paid. There is no general obligation of the State, or any of its agencies, for the payment of such bonds, notes or certificates.

The above observations seem to answer the above question, by showing that each issue of revenue bonds, notes or certificates constitute a distinct and separate project to which the holders of such bonds, notes or certificates must look to for payment. The income by way of rents, tolls or fees of each project is the primary fund from which payments are to be made; the personal obligation of the Improvement Commission, if any there be, would be only secondary, and probably of little value.

October 6, 1950—050-479.

**FLORIDA COUNCIL FOR THE BLIND—LANDS—BUILDINGS—
EQUIPMENT—USE BY OTHER STATE AGENCIES—
REMOVAL—CHAPTER 420, FLORIDA STATUTES**

QUESTION: Where a portion of a former Federal Military installation was conveyed and transferred to the Florida Council for the Blind, by the proper Federal agency under the Federal statutes, may a portion of the buildings and equipment on the lands so conveyed and transferred, not needed by the said Council for the Blind, be transferred to other state boards and agencies and removed from the said lands, with proper Federal authority and consent?

To: *Florida State Improvement Commission:*

.....

Conclusion.—Although we fear that the Florida Council for the Blind is without direct authority to dispose of any of the buildings and equipment in question, we are of the further opinion that the Florida State Improvement Commission has authority to procure any surplus buildings and equipment from the Council for the Blind (the said Council for the Blind being authorized to cooperate with the said Improvement Commission in the exercise of its powers and authority under Chapter 420, Florida Statutes), and use them for the purpose of relieving housing, building and equipment shortages in connection with other state boards, commissions, departments and agencies. This may be accomplished by the Council for the Blind surrendering the buildings and equipment in question to the Federal Government and the Improvement Commission procuring the same from the Federal Government, or by the Council for the Blind, with proper Federal authority and consent, delivering the property in question to the Improvement Commission for the purposes aforesaid. These observations seem to answer the above question indirectly.

CHAPTER XXVII

LABOR

WORKMEN'S COMPENSATION LAW

January 26, 1949—049-31.

WORKMEN'S COMPENSATION—MAXIMUM DISABILITY PAYMENT—EMPLOYEES, UNIVERSITY OF FLORIDA

QUESTION: May the University of Florida pay injured employees on the basis of sixty per cent of their regular salary, or is the payment restricted to the twenty-two dollars per week provided in Section 440.12 of the Statutes of 1941?

To: Board of Control, Tallahassee, Florida:

Section 440.12, as amended, reads in part as follows:

"Compensation for disability shall not exceed twenty-two dollars per week nor be less than eight dollars per week;"

The twenty-two dollars per week provided in the statute is the maximum which a state agency may pay for injured employees as workman's compensation.

May 6, 1949—049-201.

COUNTIES—EMPLOYEES—COUNTY COMMISSIONERS, HOME DEMONSTRATION AGENTS—WORKMEN'S COMPENSATION ACT

QUESTIONS: 1. Are county agents and home demonstration agents and their clerks, who are employees of the Department of Agriculture but whose pay is supplemented by the Board of County Commissioners, employees of the county so as to come under the compensation act as employees of the county?

2. Where members of the board of county commissioners are elected officials, are they employees of the county so as to come under the terms of the Workmen's Compensation Act?

To: Honorable Wendell C. Heaton, Acting Director, Workmen's Compensation Division, Florida Industrial Commission:

.

In view of the foregoing, the above questions are properly answered as follows:

1. (a) Home demonstration agents and county agricultural agents are not employees of the county so as to come under the Workmen's Compensation Act as employees of the county.

(b) In those counties where persons are hired by the county board as clerical help for such agents and the county

pays the salary of such persons and retains the right to terminate the employment of such persons, they are employees of the county so as to come under the Workmen's Compensation Act as employees of the county. However, where persons are employed to perform clerical help for such agents through the extension service, compensation is paid partly through that service and partly by the county and the county has no control over the duties of such person or the right to terminate their employment for such persons are not employees of the county so as to come under the terms of the Workmen's Compensation Act as employees of the county.

2. Members of the board of county commissioners are not such employees of the county as to come under the terms of the Workmen's Compensation Act. (See Section 440.02 (1), Florida Statutes, 1941).

August 4, 1949—049-360.

**WORKMEN'S COMPENSATION INSURANCE—RETROSPECTIVE
RATE PLAN—STATE DEPARTMENT—\$440.38 (5), F. S.**

QUESTION: May a state department purchase workmen's compensation insurance with a retrospective rating plan attached, in view of the fact that such a plan permits adjustment of the final premium for a risk on the basis of its own loss experience, subject to maximum and minimum premium limits?

To: Honorable J. Edwin Larson, Insurance Commissioner:

.....

In my opinion, the above question is answered in the affirmative; that is to say, that the adjustment of the final premium rate on the basis of loss experience, within stated premium limits, does not appear to be an impediment to a department of the state obtaining insurance coverage under such a plan.

The above answer is limited to the question as stated.

October 24, 1949—049-515.

**F.I.C.—WORKMEN'S COMPENSATION DIVISION—GOVERNMENT
AGENCIES—SELF INSURERS—ASSESSMENT—LIABLE
FOR—SEC. 440.51, F. S. '41**

QUESTION: Is the Workmen's Compensation Division of the Florida Industrial Commission entitled to assess municipalities, state boards, bureaus, departments and agencies, which are self insurers under the Workmen's Compensation Law, on their entire pay roll, both proprietary and governmental, under the provisions of Section 440.51, Florida Statutes, for the administrative expenses therein contemplated?

To: Honorable Wendell C. Heaton, Acting Director, Workmen's Compensation Division, Florida Industrial Commission:

.....

..... the question is answered in the affirmative.

October 19, 1949—049-539.

**LABOR UNIONS—AMERICAN GUILD VARIETY ARTISTS—NOT
SUBJECT TO—PROVISIONS—SECTION 8(c), CHAPTER
25265, ACTS 1949**

QUESTION: Is the American Guild of Variety Artists, a labor union, a "union" within the meaning of such word as it is used in Section 8(c), Chapter 25265, Laws of Florida, Acts of 1949 (i.e. Section 8 of Chapter 24080, Laws of Florida, Acts of 1947, as amended by Section 7 of said Chapter 25265) and, as such a "union," subject to the provisions of said Section 8(c) with respect to the conditions under which an employer may be required to furnish bond to guarantee payment of salaries or performances of members of said labor union?

To: Honorable Wendell C. Heaton, Acting Director, Workmen's Compensation Division, Florida Industrial Commission:

..... the question is answered in the negative.

January 12, 1950—050-14.

**BARBER—MASTER AND SERVANT—PERCENTAGE COMPENSA-
TION—\$440.02, F. S. '41**

QUESTION: Is a barber who is assigned a chair and receives a percentage of the gross receipts yielded by him from this chair, within the terms of the Workmen's Compensation Act, when the owner of the shop requires that regular hours be maintained, certain standards of work be maintained and who may dispense with a barber's services at will?

To: Honorable Wendell C. Heaton, Acting Director, Workmen's Compensation Division:

..... your question is answered in the affirmative.

February 16, 1950—050-71.

**INJURY TO TEACHER—SCHOOL BOARD TORT LIABILITY—PUB-
LIC EMPLOYEE—\$440.02, FLORIDA STATUTES 1941**

QUESTION: Is a county school board liable under the workmen's compensation act for injuries sustained by a teacher-employee while on duty?

To: Honorable Thomas D. Bailey, Superintendent, Department of Education:

Section 440.02, Florida Statutes, relating to workmen's compensation, provides, in part:

"The term 'employment' includes employment by the state and all political subdivisions thereof and all public and quasi-public corporations therein . . ."

Under this section, teachers in public schools are included in its provisions as employees.

Before attempting to reach a decision as to whether or not the county school board is liable for an injury such as you have described in this specific case, it would be necessary to consider all available evidence, including medical testimony, as to the degree of injury suffered by the teacher making the claim.

I therefore suggest that a hearing should be held on this matter by a deputy commissioner of the Industrial Commission in order that an award may be made if the claimant is entitled to one.

In order to accomplish this, the teacher should be advised that she should write to the Florida Industrial Commission at Tallahassee and request a hearing.

March 4, 1950—050-107.

**WORKMEN'S COMPENSATION LAW—GOLF PROFESSIONAL—
§440.02(1), FLORIDA STATUTES—APPLICABLE**

QUESTION: Where a golf club employs a golf professional who, in addition to his duties as professional, supplements his income with certain club concessions, but does not play in exhibitions and who is subject to discharge at will by the Executive Board of such club, is the golf professional excluded from the workmen's compensation law by virtue of Section 440.02(1) Florida Statutes 1941?

To: Honorable Wendell C. Heaton, Acting Director, Florida Industrial Commission:

.....
..... the question is answered in the negative.

March 21, 1950—050-137.

**WORKMEN'S COMPENSATION LAW—TAXICAB DRIVERS—
§§440.02(2), 440.02(12), F. S. '41 APPLICABLE**

QUESTIONS: 1. Where the owners of motor vehicles register their vehicles with a taxicab company and obtain from it permission to operate such vehicles as taxicabs under the name of the said company, for which such owners pay the taxicab company a fee for each call received through the company's office or taxi stands, although the said owners are requested to keep regular hours and charge standard rates the company has no direct control over them other than to cancel the permission to operate as above, are such owners within the purview of the workmen's compensation statutes?

2. Where a taxicab company rents one of its taxicabs to an individual, for the use of which it charges the sum of eight cents per mile driven, but retains the right to cancel that rental agreement at any time, and further requires that such driver be under the general supervision of the company when driving such taxicab, receive his calls through the company's office or taxi stands, and be otherwise under the direction of the said company, is such individual an employee of the taxi company within the workmen's compensation statutes?

To: Florida Industrial Commission, Workmen's Compensation Division:

.....
..... Question one is therefore answered in the negative.

Question two, however, presents a more difficult problem. . . .

. . . . I am compelled to take the position that it is impossible to render an authoritative opinion on the question at present and suggest that appropriate action be initiated to secure a ruling from the Supreme Court of Florida.

May 18, 1950—050-245.

FLORIDA INDUSTRIAL COMMISSION—MERIT SYSTEM—EXCEPTIONS—CHAPTER 24201, ACTS 1947—§§295.07-295.12,
FLORIDA STATUTES

QUESTION: Where, under the provisions of Chapter 24201, Laws of Florida, 1947, certain preferences are given veterans, their wives and widows in certification for appointment to positions, but said law excludes from its operation by Section 2 thereof, "positions in professional and scientific services for which the entrance salary is over \$3000.00 per annum," do the positions of Director of Workmen's Compensation Law and that of Executive Director of both the Employment Compensation Division of the Florida State Employment Service Division fall within such exception?

To: *Honorable Angus Laird, Merit System Supervisor:*

. . . .

It is my opinion that as to the Director of the Workmen's Compensation Law, the question is to be answered in the affirmative, and as to the Executive Director it is to be answered in the negative.

It is impossible to state a general rule as to whether or not other certain positions are within or without the exception covered by your question. The facts of each particular situation must necessarily govern the conclusion reached.

May 26, 1950—050-258.

CHRISTIAN SCIENCE PRACTITIONERS—FEES FOR SERVICES—
§440.13(1) FLORIDA STATUTES

QUESTION: Is a Christian Science Practitioner entitled to receive a fee for services rendered under Section 440.13(1), Florida Statutes?

To: *Honorable Raymond E. Barnes, Chairman, Florida Industrial Commission:*

. . . .

As there appears no court ruling determining the question here presented, it is my opinion that your question should be submitted to the courts for a declaratory decree. In this manner all parties concerned would be afforded the opportunity of presenting their views and a proper court ruling should determine the answer to your question with finality.

July 21, 1950—050-353.

WORKMEN'S COMPENSATION INSURANCE—COUNTY ROAD EMPLOYEES—COMMISSIONERS—PREMIUMS AUTHORIZED—
§440.38 (5), FLORIDA STATUTES

QUESTION: May the Board of County Commissioners of St. Lucie County expend county funds in payment of premiums for workmen's

compensation insurance issued for the benefit of county road employees?

To: *Honorable Raymond E. Ford, Clerk, Board of County Commissioners of St. Lucie County, Fort Pierce, Florida:*

.....
Hence, the question is answered in the affirmative.

August 7, 1950—050-386.

EMPLOYEES—BOARD OF PUBLIC INSTRUCTION—BOARD OF
COUNTY COMMISSIONERS—SUBJECT TO WORKMEN'S
COMPENSATION ACT—CHAPTER 440, FLORIDA
STATUTES

QUESTION: Are employees of the Board of Public Instruction of Santa Rosa County and employees of the Board of County Commissioners of Santa Rosa County subject to the provisions of the Workmen's Compensation Act (Chapter 440, Florida Statutes).

To: *Board of Public Instruction: Board of County Commissioners: Honorable Woodrow M. Melvin, Attorney-at-Law, Milton, Florida:*

.....
Your question is therefore answered in the affirmative.

November 1, 1950.—050-511.

WORKMEN'S COMPENSATION LAW—STATE AND POLITICAL
SUBDIVISIONS—RIGHT TO ELECT TO ACCEPT OR RE-
JECT—§§440.05, 440.05 (1), FLORIDA STATUTES

QUESTIONS: 1. Does Section 440.38 (b) (5) make an election for the State of Florida, its boards, bureaus, departments, agencies and political subdivisions to become self-insurers unless they elect to procure and maintain insurance to secure the benefits of the Compensation Act?

2. May the State, its boards, bureaus, departments, agencies and political subdivisions, under Section 440.05, elect not to accept the provisions of the Act?

To: *Honorable Rodney Durrance, Director, Workmen's Compensation Division, Florida Industrial Commission:*

.....
(1) This question is answered in the affirmative.

(2) The election not to accept the provisions of the Act set forth in Section 440.05 (1) is for the benefit only of private employers as contemplated by the Act; hence, this question is answered in the negative.

December 11, 1950.—050-552.

FLORIDA INDUSTRIAL COMMISSION—WORKMEN'S COMPEN-
SATION DIVISION—GENERAL COUNSEL—PUBLIC
PART-TIME EMPLOYMENT—ELIGIBILITY

STATEMENT and QUESTION: The Trade and Industrial Commission of the State Department of Education in an expansion program, is

desirous of having the general counsel of Workmen's Compensation Division, Florida Industrial Commission, teach certain adult classes in connection with such program. Compensation for such services would be paid by a county or counties of the State, but eventually reimbursed from federal or matched funds.

(1) Would such an arrangement conflict with the provisions of Article XVI, Section 15, Constitution of Florida, or other provisions of law?

(2) Would the provisions of Section 440.44 (4) (c), Florida Statutes, 1949, make necessary a reclassification of the above position of general counsel as part time employment?

To: *Hon. Wendell C. Heaton, General Counsel, Workmen's Compensation Division, Florida Industrial Commission:*

..... the above questions are answered as follows:

(1) Article XVI, Section 15, Florida Constitution, sets forth no prohibition against a person who holds the position of general counsel and deputy commissioner of the Workmen's Compensation Division engaging, at the same time, in the teaching employment in the program set forth above. There appears to be no other constitutional or statutory law of this state prohibiting such employments. In the absence of such legal impediments, there remains only the matter of public policy involved. The powers and duties of a deputy commissioner, as indicated above, at least approach the functions of a public officer. Such question of public policy is one for consideration of and determination by Florida Industrial Commission.

(2) If the Commission shall determine that the employments here mentioned will not offend public policy, it must then determine whether the position of general counsel of Workmen's Compensation Division is a position of full time or part time employment. Factors to be considered in deciding that question are, the nature and extent of duties and salary of such general counsel, and the time normally required of a person in the performance of such duties. If, after considering such matter, the Commission should determine that the position is one of part time employment, to remove doubt that might exist by reason of the above-quoted portion of subsection 440.44 (4) (c), it should so classify such position by proper rule or regulation.

December 27, 1950.—050-579.

COUNTY COMMISSIONERS—AUTHORITY—CERTAIN COUNTY
OFFICERS AND EMPLOYEES—GROUP INSURANCE—WORK-
MEN'S COMPENSATION LAW—POLK COUNTY

QUESTION: May the provisions of Chapter 20078, Special Acts of 1939, which authorizes the Board of County Commissioners of Polk County to provide group insurance in lieu of the benefits of the Workmen's Compensation Act for certain county officers and employees, be waived, so as to permit such officers and employees to come under the terms of the Florida Workmen's Compensation Act?

To: Honorable Rodney Durrance, Director, Workmen's Compensation Division, Florida Industrial Commission:

.....

Your question, then, is answered in the affirmative, with the clear understanding that any waiver of the provisions of Chapter 20078, Special Acts of 1939, must be made by the Board of County Commissioners, and not by the affected officers and employees themselves. Consequently, in order to avoid future misunderstandings and to clarify the status of the officers and employees involved, it is recommended that the Board of County Commissioners pass a formal resolution indicating whether or not group insurance will be provided in lieu of the Compensation Law.

UNEMPLOYMENT COMPENSATION LAW

July 14, 1949—049-315.

UNEMPLOYMENT COMPENSATION FUND—EMPLOYMENT SECURITY ADMINISTRATION FUND—SPECIAL EMPLOYMENT SECURITY ADMINISTRATION FUND—STATUS—TRUST FUND—CHAPTERS 25206, 25068, ACTS 1949

QUESTIONS: (1) Is the unemployment compensation fund deemed a trust fund and therefore excluded from the operation of Chapter 25068, Laws of Florida, Acts of 1949?

(2) Is the unemployment compensation security administration fund deemed a trust fund and therefore excluded from the operation of Chapter 25068, Laws of Florida, Acts of 1949?

(3) Is the special employment security administration fund deemed a trust fund and therefore excluded from the operation of Chapter 25068, Laws of Florida, Acts of 1949?

(4) If question No. 3 is answered in the negative, is Chapter 25206 legally sufficient to exclude the special employment security administration fund from the operation of Chapter 25068?

To: Honorable Raymond E. Barnes, Chairman, Florida Industrial Commission:

.....

In view of the foregoing, in my opinion the above questions are answered in their numbered order as follows:

(1) By federal law the unemployment compensation fund is a trust fund and hence falls within Section 2(26) of Chapter 25068 and is thus excluded from the effects of said chapter (see Title 42, Sections 1103 and 1104, U.S.C.A.).

(2) Such funds fall within the exceptions set forth in Section 2(12) of Chapter 25068 and are thus excluded from the effects of said chapter.

(3) It is not apparent that the money in this fund falls within the exceptions set forth in Section 2 of Chapter 25068 either as trust funds or otherwise.

(4) It appears that the provisions of Chapter 25206 in effect excepts from the provisions of Chapter 25068 the special employment security administration fund.

July 27, 1949—049-353.

FLORIDA INDUSTRIAL COMMISSION—AUTHORIZED ADOPTION
REGULATION NO. 55 ESTABLISHING NEW BENEFIT YEAR—
EMPLOYERS CONTRIBUTION RATES—SECTION
443.08 (3 APPLICABLE

QUESTIONS: 1. Was Florida Industrial Commission authorized to adopt its Regulation No. 55, relating to a uniform benefit year for cigar workers in Hillsborough County, in pursuance of Section 443.03(3) Florida Statutes?

2. If the Commission was authorized to adopt the regulation above mentioned, was and is it authorized by law to pay benefits pursuant to the authority of the Unemployment Compensation Law, and particularly to cigar workers, as supplemented by Regulation No. 55, thereby determining duration of benefits on the basis of the wages paid to individuals in the base period respectively applicable to individuals with an individual benefit year and to the same individuals with a uniform benefit year, and notwithstanding that in some instances the same wages may have appeared in the base period applicable to both such separate benefit years?

3. Does the language of Section 443.04(4) authorize the treatment of a uniform benefit year established by Regulation No. 55 as a separate and distinct benefit year from a previously established benefit year which has not yet ended at the time of the commencement of the uniform benefit year, for the same individual?

To: Honorable Burnis T. Coleman, General Counsel, Unemployment Compensation Division, Florida Industrial Commission, Tallahassee, Florida:

.....

In view of the foregoing, in my opinion the above questions are answered as follows:

It is recognized that the problems here presented are rather complex and that nothing short of an adjudication by a court in proper proceeding could settle them with any degree of finality. In the absence of such determination, the following answers to the questions seem the most reasonable in view of the intent and purpose of the Unemployment Compensation Law.

1. This question involves the validity of the proviso in Section 443.03(3) authorizing the establishment of the uniform benefit year. Under the circumstances here found it is not the policy of this office to pass upon the validity of legislation and, for present purposes, it is assumed that such legislation is valid. Conditioned upon such assumption, it would seem that the Commission was authorized to adopt Regulation No. 55 at the time it did.

2. Regulation No. 55 established a new benefit year and apparently a "benefit year" within the meaning of that term as it is used in Section 443.04(4)(a). Hence, in the absence of legislation provid-

ing particularly for transition of a claimant from an individual to a uniform benefit year, it seems the regulation must be construed as establishing a new benefit year as above suggested.

3. This question is answered in the preceding paragraph. However, it is repeated that for practical and administrative reasons Regulation No. 55 is to be construed as establishing a new benefit year, separate and distinct from an individual benefit year which had not ended at the time of the commencement of the uniform benefit year, for the same claimant.

With respect to the foregoing answers, attention is directed to the fact that contribution rates of employers under the Unemployment Compensation Law as fixed in Section 443.08(3) are determined substantially on the basis of benefit charges made to their employment records by reason of benefits paid to their former employees. In the event of overlapping of base periods in connection with the transition of a claimant from an individual to a uniform benefit year, no employer's account should be charged more than the amount contemplated by the provisions of the Unemployment Compensation Law, the intervention of the uniform benefit year notwithstanding.

August 8, 1949.—049-365.

FLORIDA INDUSTRIAL COMMISSION—UNEMPLOYMENT COMPENSATION DIVISION—EMPLOYMENT—RESIDENCE REQUIREMENTS—§443.12 (4), F. S.—APPLICABLE

QUESTION: Is a person eligible for employment by the unemployment Compensation Division of Florida Industrial Commission, who became a bona fide resident of this state within the last two years, but who has married a person who has been a bona fide resident of this state for more than the last past two years, in view of the provisions of Section 443.12 (4), Florida Statutes?

To: Honorable Angus Laird, Supervisor Florida Merit System:

.....

..... the question is answered in the negative.

October 30, 1950.—050-507.

FLORIDA INDUSTRIAL COMMISSION—UNEMPLOYMENT COMPENSATION DIVISION—CLAIMS—DELINQUENT CONTRIBUTIONS—§443.03, (7) (d), FLORIDA STATUTES

QUESTIONS: 1. Is the Commission authorized, and therefore required, to collect contributions with respect to wages paid prior to July 1, 1947 if, under the applicable provisions of the Unemployment Compensation Law at the time of the payment of such wages, there is no question of the fact that the employing unit became liable for the payment thereof except that the Commission had no knowledge thereof until after the July 1, 1947 change in the Unemployment Compensation Law deleting the language which imposed the contributions?

2. If the answer to the foregoing question is in the affirmative, may the Commission compromise or settle a claim for delinquent contributions in view of the fact that there has been a change in the

Unemployment Compensation Law and that under the identical or same circumstances no contributions would be due at the time of settlement or collection?

To: *Honorable Burnis T. Coleman, General Counsel, Florida Industrial Commission:*

.....
..... Your first question is therefore answered in the affirmative.
..... your second question is answered in the negative.

PRIVATE EMPLOYMENT AGENCIES

August 25, 1950.—050-417.

STATE OF FLORIDA—EMPLOYMENT AGENT—LICENSE QUALIFICATIONS—EXPERIENCE REQUIRED—§449.02 (2), FLORIDA STATUTES

STATEMENT & QUESTION: Section 449.02(2) Florida Statutes, provides in pertinent part:

"Every corporation applying for license as agents hereunder must be organized and authorized to do business under the laws of the State of Florida, and shall have capacity to make valid contracts and sue and be sued in this State. All applicants for agents' licenses who are natural persons, and all officers of corporate applicants, shall be competent, honest, truthful, trustworthy, of good character and bear a reputation for fair dealing. Each such person must also be a citizen of the United States and have had three years of experience as an employment clerk in the State of Florida, or the equivalent thereof in related fields, which experience must have been continuous and immediately preceding the date of such application, or in lieu of the required experience must have been a previously licensed owner or operator of an employment agency in the State of Florida."

Does the phrase "or the equivalent thereof in related fields" as used in the third sentence of the above quoted portion of the statute mean that such experience must be obtained in the State of Florida?

To: *Honorable Rodney Durrance, Director, Workmen's Compensation Division, Florida Industrial Commission:*

..... Your question is therefore answered in the affirmative.

December 22, 1950.—050-577.

PRIVATE EMPLOYMENT AGENCIES—RIGHT TO CHARGE NON-REFUNDABLE SERVICE FEE—§449.05 (5) FLORIDA STATUTES APPLICABLE

QUESTION: May a private employment agency in this state, licensed pursuant to Chapter 24080, Acts of 1947, as amended by Chapter 25265, Acts of 1949 (same being Chapter 449, Florida Statutes, 1949) properly charge an employee-applicant a special fee for services rendered in connection with the securing of employment and which fee shall not be refundable in the event the employee-applicant is not furnished with employment by such agency?

To: *Honorable Rodney Durrance, Director, Workmen's Compensation Division, Florida Industrial Commission:*

.....
 in my opinion the above question is answered in the negative; that is to say that under subsection 449.05 (5) no special fee may be charged an employee-applicant by an employment agency which is not refundable in the event the employee-applicant is not furnished with employment by the agency.

CHILD LABOR

September 21, 1949.—049-445.

ALCOHOLIC BEVERAGES—LICENSED VENDOR—MINORS— EMPLOYMENT PROHIBITED

QUESTION: May a person under twenty-one years of age be employed in a place of business operated by a person who is a vendor licensed under the beverage law of Florida?

To: *Honorable Wendell C. Heaton, Acting Director, Workmen's Compensation Division, Florida Industrial Commission:*

.....
 In view of the foregoing, in my opinion the above question is answered as follows:

No person under twenty-one years of age, whether such person's disabilities of nonage have been removed by marriage or otherwise, shall be employed in an establishment, the operator of which is a vendor under the beverage act, provided, that such a minor may be employed in such an establishment where the following circumstances exist; (a) professional entertainers between the ages of eighteen and twenty-one years who are not in school; (b) minors employed in drug or grocery stores which have a license to sell beer and wine where sales are made for consumption off the premises only; (c) bellhops, elevator boys and others who are minors employed in a hotel when such employees are engaged in work apart from the portion of the hotel property where alcoholic beverages are offered for sale for consumption on the premises.

PUBLIC UTILITY ARBITRATION LAW

December 15, 1949.—049-591.

LABOR DISPUTES—U. S. PHOSPHORIC PRODUCTS CO.—TAMPA— NOT PUBLIC UTILITY

QUESTION: Is the U. S. Phosphoric Products Co. of Tampa a public utility within the meaning of the Florida Public Utility Arbitration Law?

To: *Honorable Fuller Warren, Governor of Florida:*

Your question must be answered solely upon a determination of the facts submitted.

Relying upon the information furnished to me, as referred to above, I am of the opinion that the employer is not a public utility within the meaning of the act in question.

.....

March 15, 1950.—050-128.

SEE: Opinion number 049-591

FLORIDA PUBLIC UTILITY ARBITRATION LAW—WESTERN
ELECTRIC COMPANY, INC.—CHAPTER 453, FLORIDA
STATUTES 1941 NOT APPLICABLE TO

QUESTION: Is the Western Electric Company, Inc., a public utility within the meaning of the Florida Public Utility Arbitration Law (Chapter 453, Florida Statutes)?

To: *Honorable Fuller Warren, Governor of Florida:*

.

Your question is therefore answered in the negative.

CHAPTER XXVIII

PROFESSIONS AND VOCATIONS

ATTORNEYS AT LAW

February 21, 1949.—049-64.

DISBARMENT PROCEEDINGS—COURT COSTS—COUNTY NOT LIABLE

QUESTIONS: 1. May a county pay stenographic and other cost of court in disbarment proceedings?

2. May a county pay stenographic cost incurred by a circuit court commission in holding its hearings?

To: *Honorable Jess Mathas, Clerk of the Circuit Court, Volusia County, DeLand, Florida:*

..... No provision was made for payment of the members serving on a circuit court commission and it was apparently contemplated that such expenses as it necessarily might incur would be borne by the State as a part of its necessary contribution to its own welfare and protection.

There is an appropriation for judiciary department for expense in the amount of \$200,000 per year. In the budget on which the appropriation was based, this item is scheduled for "Jurors and witnesses and other expenses." It is my opinion that any of the disbarment costs not chargeable to the attorney involved may be paid from that fund.

The answers to both questions must be in the negative.

May 15, 1950.—050-240.

MUNICIPAL JUDGE—CITY ATTORNEY—LAW PARTNER— ELIGIBLE FOR APPOINTMENT AS—§454.19, FLORIDA STATUTES

QUESTION: Where one member of a law firm is Municipal Judge, is another member of this firm, in view of Section 39.19, Florida Statutes, 1941, eligible for appointment as City Attorney of the same Municipality?

To: *Hon. Frank C. Stanley, City Attorney, Auburndale, Florida:*

The pertinent portion of Section 39.19, Florida Statutes, 1941 (Section 454.19, Florida Statutes, 1949) reads as follows:

"..... No attorney who may be a law partner with any judge of any state or municipal court who is permitted by law to practice law, shall be allowed to practice before the court of which his partner is judge." (Emphasis Supplied)

It is assumed that there is no provision in your city charter which prohibits the Municipal Judge from practicing law. It is to be noted that the prohibition in the statute above quoted is directed towards

the attorney practicing in the court of the law partner who is the judge of such court but not otherwise. There is nothing in the statute prohibiting the partner from being appointed city attorney when a law partner is the Municipal Judge. No doubt instances will arise from time to time which will require the appearance of the City Attorney in the Municipal Court. Under the circumstances covered by this opinion, and by reason of the statute set out above, such attorney would be prohibited from appearing in the Municipal Court. But in no other particular would he be limited in representing the city as its attorney.

It is, therefore, my opinion, subject to the above, that the question is to be answered in the affirmative.

ADMINISTRATIVE BOARDS, GENERALLY

September 14, 1950.—050-444, 050-382.

FLORIDA, STATE OF—ADMINISTRATIVE BOARDS—LICENSEE—MEMBER ARMED FORCES—STATUS—§455.02, FLORIDA STATUTES

QUESTION: Is Section 2 of Chapter 21885, Laws of Florida, Acts of 1943, providing that a person who is licensed to practice or engage in his profession by an Administrative Board of the State of Florida and who is a member of the Armed Forces of the United States of America and now or hereafter ordered to active duty, shall be kept in good standing by such Board without the necessity of registering, paying dues or fees or performing any other act on his part so long as he remains on active duty with the armed forces, still in effect?

To: *State Board of Funeral Directors and Embalmers for Florida, Jacksonville, Florida:*

Section 2 of Chapter 21885, is now Section 455.02, Florida Statutes

I recently held in Opinion 050-382 that Sections 115.08 to 115.15, Florida Statutes, having to do with military leave apply to employees of the Board of Control who are called into active service or volunteer for military duty in the present emergency conflict in Korea.

I am likewise of the opinion that the provisions of Section 455.02, *supra*, are still in full force and effect.

MIDWIFERY

February 2, 1949.—049-35

LICENSE TO PRACTICE MIDWIFERY—APPLICANTS—DULY QUALIFIED OSTEOPATHIC PHYSICIANS AS SPONSORS—STATUTORY PROVISIONS, SECTION 457.02, F. S. '41

QUESTION: Whether duly qualified and licensed practicing osteopathic physicians may sponsor an applicant for a license to practice midwifery in this State?

To: *Dr. Wilson T. Sowder, M.D., State Health Officer, Florida State Board of Health, Jacksonville 1, Florida:*

It is my opinion that if the applicant for a license to practice mid-

wifery possesses the qualifications as required by Section 457.03, Florida Statutes, 1941, to the satisfaction of the State Health Officer, then and in that event, a registered and practicing osteopathic physician is qualified to act as sponsor for such applicant.

PHYSICIANS

March 8, 1949.—049-92.

MEDICINE—PRACTICE—EMERGENCY LICENSE—GOVERNOR NO AUTHORITY TO ISSUE

QUESTION: May the Governor issue to a person an emergency permit or license to engage in the practice of medicine in this State?

To: *Honorable Frank S. Wright, Assistant to the Governor, Tallahassee, Leon Co., Florida:*

.....
..... the question is answered in the negative.

October 25, 1949.—049-511.

MEDICAL EXAMINERS, STATE BOARD OF—FUNDS—EXPENSES—PRORATA DISTRIBUTION \$400.00 EACH MEMBER—CHAPTER 25068, ACTS '49 PROHIBITS FUTURE DISTRIBUTION

QUESTIONS: 1. Does the comptroller have legal authority to pay for expenses of members of the state board of medical examiners incurred prior to July 1, 1949, and to make a prorata distribution of \$400 to each member of the board which was the remainder of funds collected by the board for the fiscal year 1948-49 after all expenses of the board had been paid?

2. Since all continuing appropriations have been rescinded, may the medical board distribute the balance in this fund to its members in the future at the end of each fiscal year?

To: *Honorable C. M. Gay, State Comptroller:*

.....
..... your first question is answered in the affirmative.
..... your second question should be answered in the negative.

OSTEOPATHS

May 1, 1950.—050-223.

STATE BOARD OF OSTEOPATHIC MEDICAL EXAMINERS—APPROPRIATION—33-1/3% ALLOWED FOR EXPENSES—CHAPTER 25370, ACTS 1949

QUESTION: What part of the appropriation made to the State Board of Osteopathic Medical Examiners by Chapter 25370, Laws of Florida, 1949, for the first year of the biennium may be lawfully expended by the Board in the payment of salaries and expense incurred in the administration of the State agency?

To: *Dr. Richard S. Berry, Secretary-Treasurer, State Board of Medical Examiners:*

.....
On the basis of these authorities, it is my further opinion that after

the said 13.75 per cent reserved by the Budget Commission is subtracted from the entire appropriation, the Board should use 33-1/3 per cent of the appropriation for expenses and the balance to be released for the Association.

CHIROPRACTIC

April 12, 1950.—050-193.

FLORIDA STATE BOARD OF CHIROPRACTIC EXAMINERS— CERTIFICATE TO PRACTICE—FOUR-YEAR COURSE RE- QUIRED—SECTION 460.08, FLORIDA STATUTES APPLICABLE

QUESTION: Is the Florida State Board of Chiropractic Examiners authorized to issue a certificate to practice chiropractics to an applicant who prior to the enactment of Chapter 17764, Laws of Florida, 1937, graduated from an accredited chiropractic college which required for graduation the completion of a three year course, and which now requires the completion of a four year course, under the provisions of Chapter 460, Florida Statutes 1941, permitting the certification of an applicant without examination?

To: Dr. George M. Coates, Vice-President, Florida State Board of Chiropractic Examiners:

.....
The question is accordingly answered in the negative.

OPTOMETRY

February 16, 1950.—050-67.

FAILURE TO PASS REQUIREMENT OF EXAMINATION—DIS- CRETION OF BOARD—CHAPTER 463, FLORIDA STATUTES

QUESTION: Is the Florida State Board of Optometry authorized under the provisions of Chapter 463, Florida Statutes 1941, to grant to an applicant a certificate of registration and license as a registered optometrist, in a case where such applicant meets all the requirements of the statute as to age, education and moral character, but who has, upon two previous occasions, failed to successfully pass the examination held by the board for the purpose of qualifying him to engage in the practice of optometry?

To: Dr. W. F. Davey, Secretary, Florida State Board of Optometry:

.....
..... The answer to your question is accordingly in the negative.

NURSING

September 14, 1949.—049-440.

REGISTERED NURSES—QUALIFICATIONS—CITIZEN OF GREAT BRITAIN—FINAL CERTIFICATE OF NATURALIZATION REQUIRED —CHAPTER 464, F. S. '41—APPLICABLE

QUESTION: Is a citizen of Great Britain who has been granted first papers, upon declaration of intention to become a citizen of the

United States of America, eligible to receive a certificate of registration as a trained nurse, prior to securing a valid certificate of naturalization as a citizen of the United States?

To: *Mrs. Delcie C. Inglis, R. N., Secretary-Treasurer, Florida State Board of Examiners for Nurses, Jacksonville, Florida:*

.....

On July 13, 1948, my predecessor in office pronounced official opinion upon the precise question presented in which I concur. Copy of the former opinion, No. 047-150, is transmitted herewith.

The question is accordingly answered in the negative, with the explanation that, under the Acts of Congress, no person may become a citizen of the United States of America, by naturalization, until all statutory requirements have been fulfilled and a final certificate of naturalization has been issued under the mandate of judicial decree.

June 20, 1950.—050-300.

FLORIDA STATE BOARD OF EXAMINERS OF NURSES—LICENSED
ATTENDANTS—EXAMINATION REQUIREMENTS—§464.07,
FLORIDA STATUTES APPLICABLE

QUESTION: May the Florida State Board of Examiners for Nurses refuse to admit Leona Manley, to take the licensed attendant examination, when said person has been convicted on six charges of violating the nurses registration act, and posing falsely as a registered nurse in order to obtain employment as such?

To: *Honorable Delcie C. Inglis, R. N., Secretary-Treasurer, Florida State Board of Examiners for Nurses:*

.....

If the Board finds that there exists any of the grounds for refusal to admit the applicant to take the examination, as the same are set forth in Section 464.07, or that there exists any of the grounds for refusing to issue the certificate of registration, as set forth in Section 464.11, the Board may notify the said woman that her application is denied.

.....

October 30, 1950.—050-509.

FLORIDA STATE BOARD OF EXAMINERS FOR NURSES MAY
CONDUCT EXAMINATIONS ANY PLACE WITHIN STATE
—§§462.02 and 464.07, FLORIDA STATUTES

QUESTION: Is it lawful for the Florida State Board of Examiners for Nurses to hold meetings for the purpose of conducting examinations of applicants for licensed attendants at places other than Jacksonville, Florida, the home office of the Board?

To: *Honorable Delcie C. Inglis, R.N., Secretary-Treasurer, Florida State Board of Examiners for Nurses:*

.....

In view of the foregoing, it is my opinion that the Board may conduct examinations at any place within the State. It is further my opinion that at least a quorum shall be present to conduct the examinations.

PHARMACISTS

February 11, 1949—049-58.

PHARMACY EXAMINATION—APPLICANTS—QUALIFICATIONS—
APPRENTICESHIP—AGE LIMIT

QUESTIONS: (1) What qualifications, as prerequisites to the right to take the examination to be entered as a registered pharmacist in this State, are applicable to a person who, prior to June 4, 1925, had at least one year's practical experience in a retail drug store, in view of the provisions of Section 465.02 (5), Florida Statutes, 1941?

(2) Under Section 2212, Revised General Statutes of 1920, what was the minimum age at which a person could start acquiring the practical experience in a retail drug store, as contemplated by said section?

To: *Mr. R. Q. Richards, Secretary, Board of Pharmacy, State of Florida, Fort Myers, Florida:*

In view of the foregoing, in my opinion the above questions are answered in their numbered order as follows:

(1) The qualifications of an applicant for examination to be entered as a registered pharmacist who, on June 4, 1925, had at least one year's practical experience in a retail drug store, as contemplated by Section 2212, Revised General Statutes, 1920, are those qualifications set forth in said section.

(2) The minimum age for the starting of such drug store experience was not fixed specifically by said Section 2212. Since under Section 2212 an applicant for examination must have reached the minimum age of 18 years "and have had four years' practical experience in a retail drug store", the legislature recognized that a person could start to acquire such apprenticeship training at the age of 14 years. Therefore, in the absence of court adjudication of the question, the reasonable and safe position for the board to take would be to require that the applicant must have reached his fifteenth birthday on June 4, 1925, and have had on that day not less than one year's practical experience as aforesaid.

April 28, 1949—049-184.

MERCHANTS—ADVERTISEMENT—NEON SIGN—"SUNDRIES AND
MEDICINES"—VIOLATION FLORIDA PHARMACY ACT

QUESTION: Is a merchant, licensed to do business in Florida, operating an ordinary retail store selling sundries, including patent medicines, allowed under Section 465.08, Florida Statutes, 1941, to use by means of a neon sign the following words to wit: "Sundries and Medicines"?

To: *Honorable William L. Osborn, County Judge, Okaloosa County, Crestview, Florida:*

In the light of the record in the above Jenkins case, it is my opinion that the words "Sundries and Medicines" in the form of advertise-

ment by means of a neon sign at a place of business as contemplated by your question, would probably violate Section 465.08 and your question is therefore answered in the negative.

May 14, 1949—049-210.

**STATE BOARD OF PHARMACY—EXAMINATION—ELIGIBILITY
REQUIREMENTS**

QUESTION: Is a person who was 7 years 4 months and 17 days of age on June 4, 1925, and who had worked in a drug store from earliest boyhood under the supervision of a registered pharmacist of this state, eligible to be given an examination by the Florida Board of Pharmacy under the provisions of Section 465.02 (5), Florida Statutes, 1941?

*To: Honorable R. Q. Richards, Secretary, State Board of Pharmacy,
Ft. Myers, Florida:*

..... I am of the opinion that a person who was born January 17, 1918 and thus was only 7 years 4 months and 17 days of age on the effective date of this act, Section 465.02 (5), would not be within the purview and intent of the act and therefore would not be eligible to be given the pharmacy examination.

December 21, 1949—049-596.

SEE: OPINION NO. 049-184

**SUNDRIES AND MEDICINES—ADVERTISEMENT—WHOLESALE
DRUG HOUSES—SECTION 465.08, F. S. NOT APPLICABLE**

QUESTION: Does your opinion No. 049-184 recently released to Hon. William L. Osborne, County Judge, Okaloosa County, Florida, in which you ruled that a merchant licensed to do business in Florida operating an ordinary retail store selling sundries, including patent medicines, was not allowed to advertise "sundries and medicines," under Section 465.08, Florida Statutes, also apply to wholesale drug houses who advertise sundries and medicines?

To: Mr. M. H. Doss, Director, State Bureau of Narcotics:

.....
Therefore, the answer to your question is in the negative.

March 31, 1950—050-174.

**FLORIDA STATE BOARD OF PHARMACY—PRACTICAL EXAMINATION—APPLICANTS ACCEPTED PRIOR AUGUST 3, 1949
ELIGIBLE TO TAKE TWICE UPON PAYMENT
ONE FEE**

QUESTION: "Where the application of an individual for reciprocity was accepted by the Florida State Board of Pharmacy prior to August 3, 1949, with admission conditioned on the applicant successfully passing an interview and practical examination to be given by the Board at a later date, and where the practice has been for a number of years to allow each applicant two practical examinations for one fee and without resubmitting an application, if he is unsuccessful on the first, and where said individual was notified to appear for a practical examination but failed to do so, is said individual

entitled to another chance to take the practical examination even though reciprocity is no longer in existence?"

To: Honorable George I. Martin, Secretary, Florida State Board of Pharmacy:

The Florida State Board of Pharmacy has for years allowed every applicant for reciprocity in this State to take the practical examination twice upon the payment of the \$25.00 fee.

In my opinion, all those applicants who were approved by the Florida State Board of Pharmacy prior to August 3, 1949, and who were accepted by the said Board subject to the interview and practical examination, are entitled to take the said practical examination twice for the \$25.00 fee, which was submitted prior to August 3, 1949.

March 31, 1950—050-175.

FLORIDA STATE BOARD OF PHARMACY—EXAMINATION—APPLICATION FILED AFTER AUGUST 3, 1949—INVALID—
§465.02(5), DELETED FROM FLORIDA STATUTES

QUESTION: "Where an individual has for a number of years taken the pharmacy examination in this state under the provisions of Section 465.02(5), Florida Statutes, 1941; where said individual cannot qualify to take the pharmacy examination under any provision of Chapter 465, Florida Statutes, 1941, other than Section 465.02(5); where said individual has continuously failed to pass said examination; where the Florida State Board of Pharmacy has in the past allowed each individual applicant to take the examination twice upon payment of a \$25.00 fee; where the individual in the present case had taken the examination twice prior to August 3, 1949, (the date on which Section 465.02 (5), Florida Statutes, 1941, was deleted from Chapter 465, Florida Statutes, 1941); and where said individual submitted to the Florida State Board of Pharmacy a check for \$25.00 after August 3, 1949, must the Florida State Board of Pharmacy allow said individual an opportunity to take the examination?"

To: Hon. George I. Martin, Secretary, Florida State Board of Pharmacy:

.....
Therefore, your question must be answered in the negative.

April 20, 1950—050-210.

PHARMACY EXAMINATIONS—QUALIFICATION REQUIREMENTS
—CHAPTER 6890, ACTS 1915 AND CHAPTER 465,
FLORIDA STATUTES, 1941

QUESTION: "Where an applicant submitted an application to take the pharmacy examination in May, 1947; where such applicant was graduated from Fordham College of Pharmacy in June, 1928; and where such applicant was duly apprenticed to a regularly registered pharmacist in the State of New York from April, 1923, to June, 1928, is such applicant entitled to take the pharmacy examination in this state?"

To: Honorable Fuller Warren, Governor, State of Florida:

.....
it is my opinion that if the applicant meets the age and moral requirements, he is eligible to take the examination in this state.

April 21, 1950—050-212.

PHARMACY EXAMINATION—REGISTRATION LAPSED—APPLICANT ELIGIBLE—§465.03, FLORIDA STATUTES APPLICABLE

QUESTION: "Where a pharmacist was originally registered in this state by examination and has allowed his registration to lapse by not paying his fees for five years, and where such pharmacist re-applies to take the examination, but due to the fact that the qualifications for pharmacists in this state have been raised, he no longer meets the requirements to take the examination, may such a person be refused the right to take the pharmacy examination in this state?"

To: Mr. George I. Martin, Secretary, Florida State Board of Pharmacy:

.....

Therefore, it is my opinion that a pharmacist who was registered in this state by examination; who allowed his registration to lapse by not paying his fees for a period of more than five years; and who now submits a new application requesting an opportunity to be examined by the Board is qualified to take such examination.

FUNERAL DIRECTORS

August 4, 1949—049-359.

PARTNERSHIPS—FUNERAL DIRECTORS AND EMBALMERS—USING PROPER NAMES LEGAL—FICTITIOUS NAME LAW NOT APPLICABLE

QUESTIONS: (1) May a partnership established in June, 1949, and composed of David Black, duly licensed funeral director and embalmer, and H. E. Wickersham, duly licensed funeral director, legally use the name "Wickersham-Black Funeral Home," under provisions of Subsection 5 of Section 470.10 and Section 865.09, Florida Statutes?

(2) May Leslie A. Futch, a duly licensed funeral director and embalmer, who established his business in April, 1949, use the name "The Futch Funeral Home," under the above named statutes?

To: Edwin A. Mawhinney, Executive Secretary, State Board of Funeral Directors and Embalmers:

..... The answer to your first question is therefore in the affirmative.

Assuming that "The Futch Funeral Home" is not a corporation but individually owned, it becomes unnecessary to answer your second question because it is included in our answer to question one.

September 19, 1949—049-453.

FUNERAL DIRECTORS AND EMBALMERS—FUNERAL HOMES—MANAGEMENT—LICENSED EMPLOYEES REQUIRED—§470.01, F. S. '41

QUESTIONS: 1. May a person who is unlicensed either as a funeral director or embalmer under the laws of this state own a funeral home, operate the business under his own name, and take an active part

in the management of the business if he has in his employ a licensed funeral director and embalmer?

2. May a person who is unlicensed either as a funeral director or embalmer under the laws of this state own a funeral home and have the business operated under his own name by his licensed employees?

To: Mr. Edwin A. Mawhinney, Executive Secretary, State Board of Funeral Directors and Embalmers of Florida:

..... your first question is answered in the negative and your second question in the affirmative.

PROFESSIONAL ENGINEERS

May 10, 1950—050-235.

COUNTY ENGINEER—REGISTERED PROFESSIONAL ENGINEER REQUIRED—CHAPTER 471, FLORIDA STATUTES APPLICABLE

QUESTION: Must a county engineer be a registered professional engineer under the provisions of Chapter 471, Florida Statutes?

To: Honorable Joseph Weil, Secretary, State Board of Engineer Examiners, Gainesville, Florida:

..... your question is answered in the affirmative.

LAND SURVEYORS

January 11, 1949—049-7.

CIVIL ENGINEERS—QUALIFICATIONS—MAKING PLATS

QUESTION: As to whether Chapter 472 of Florida Statutes prevents a civil engineer, who at the time of the passage of said act was graduate of an engineer college, of recognized good reputation, had been engaged in surveying work within the State of Florida for over twenty years, is a member of the Florida State Board of Engineers and registered as a civil engineer therewith from making plats required by Section 177.02 of Florida Statutes, 1941?

To: Honorable Walter W. Woolfolk, Assistant State Attorney, Tenth Judicial Circuit of Florida, Lake Wales, Florida:

..... it is my opinion that a member of the Florida State Board of Engineers registered as a civil engineer therewith is not prevented from making plats required by Section 177.02, Florida Statutes, 1941, if registration as required by said Section 472 has been had.

February 23, 1949—049-77.

SUMTER COUNTY—SURVEYOR—REGISTRATION REQUIRED— VIOLATION—OUSTER ORDERED—GOVERNOR POWER TO APPOINT

QUESTIONS: 1. Is there a duly elected County Surveyor in Sumter County, as required by law when the person elected is not a registered surveyor?

2. Is it in order for the Governor to appoint a County Surveyor?

To: *Honorable C. Burton Marsh, Clerk of Circuit Court, Bushnell, Florida:*

..... I am of the opinion that the question should be answered in the negative. In answer to your second question, it is my opinion that it should be answered in the affirmative.

PUBLIC ACCOUNTANTS

March 21, 1949—049-111.

FLORIDA ACCOUNTANTS ASSOCIATION—CORPORATE NAME, "ACCOUNTANTS"—USE OF WORD NOT PROHIBITED

QUESTION: A group of persons who are not authorized to practice accountancy have formed a corporation under the laws of Florida known as the Florida Accountants Association. Have these people a right to organize such a corporation under the laws of this State, using the word "accountants" in their corporate name?

To: *State Board of Accountancy, Miami, Florida:*

I find nothing in the statutes which would prohibit the use of the word "accountants" in a corporate name of an association of this kind.

May 16, 1949—049-211.

STATE BOARD OF ACCOUNTANCY—AUTHORITY—REGULATIONS —EXAMINING CANDIDATES—CERTIFIED PUBLIC ACCOUNTANTS

QUESTION: Is the State Board of Accountancy conforming to the requirements of the Florida statutes when the uniform examination compiled by an examining board of the American Institute of Accountants is utilized by the Florida State Board of Accountancy in examining candidates for certified public accountant?

To: *Mr. Charles B. Costar, Secretary, State Board of Accountancy, Miami, Florida:*

..... If you specifically adopt each of these questions and grades as your own, I do not feel that you are delegating any authority which the Legislature has given you, and it is my opinion that you have ample authority under the laws of Florida to conduct examinations just as you have outlined in your letter.

BARBERS

March 6, 1950—050-113.

BARBER SCHOOL—APPLICANTS—ADMISSION—EXAMINATION QUALIFICATIONS—CHAPTER 476, FLORIDA STATUTES —APPLICABLE

QUESTIONS: "1. Can we approve an enrollment for an applicant and at the same time approve his application to the Commission, the enrollment in this case to be for post graduate course?"

2. Can we approve an enrollment for less than 1000 hours or 500 as stated in the law?

3. Does the barber college have to enroll all students whether for post graduate course or not?"

To: *Mr. Pryor P. Young, Chairman, Barbers' Sanitary Commission, Tallahassee, Florida:*

..... Your second question is therefore answered in the affirmative unless the applicant comes under the provisions of subsection (f) of section 6 of the act which requires additional instruction of 500 hours for applicants who have failed to pass the examination given by the Commission.

Your question 3 was discussed in my answer to question 1. It is answered in the affirmative.

March 11, 1950—050-122.

STATE BOARD OF BEAUTY CULTURE—FLORIDA BARBER LAW—
BEAUTY SHOPS CUTTING HAIR OF MEN PATRONS—
CHAPTER 476, F. S. '41—APPLICABLE

QUESTION: May beauticians cut hair and shave the neck of men patrons with a razor?

To: *Miss Ethel M. Manning, Executive Secretary, State Board of Beauty Culture:*

..... your question is answered in the affirmative.

May 18, 1950.—050-244.

BARBERS CERTIFICATES—RENEWAL OR RESTORATION—
PRACTICE—REGISTRATION FEES—CHAPTER 476,
FLORIDA STATUTES

QUESTIONS: 1. Is the fee for the renewal of a certificate to practice barbering when the barber makes application after July 1, but before August 1, \$5.00?

2. Is the fee for the restoration of a certificate to practice barbering when the barber makes application after August 1, of any one year, \$6.00?

3. Is the fee for the restoration of a certificate to practice barbering when the barber has continued to barber the entire time and fails to have the certificate restored for a two, three, four and five year period, \$12.00?

To: *Honorable Pryor Young, Barbers' Sanitary Commission:*

.....
Therefore in view of the above, questions 1 and 2 must be answered in the affirmative.

In my opinion therefore the \$12.00 fee is only applicable to those barbers and barber teachers who retire from the practice of barbering or the teaching of barbering for a period of time not exceeding five

.....

years. If the applicant has continued to practice or to teach barbering after the expiration of his license, then the required restoration fee otherwise mentioned in said section 476.16 shall be applicable in an accrued form, or six dollars for every year the applicant has practiced without paying his registration fee.

Therefore, question 3 must be answered in the negative subject to the above remarks.

August 28, 1950.—050-425.

**FLORIDA BARBERS' SANITARY COMMISSION—DUTIES—\$476.11,
FLORIDA STATUTES APPLICABLE**

QUESTIONS: 1. Should or should not out-of-state applicants submit with their application a current (up-to-date) license from the state or country in which they last practiced as a barber? This, if the state or country has a license law.

2. Should or should not out-of-state applicants submit with their application affidavits stating his practice as a barber in that state or country, five years immediately prior to making application? This, if the state or country did not or does not have a Barber Law.

3. Barbers may be employed in government owned bases, etc., without much experience, a license is not required. Should or should not such application be approved for an examination unless said applicant has a current license or affidavits as stated in 1 and 2 above?

4. Should or should not blood test reports signed by physicians accompany all renewals?

To: Mr. Pryor P. Young, Chairman, Barbers' Sanitary Commission:

.....

Your first question is, therefore, answered in the affirmative.

Your second question is answered in the affirmative in accord with the above cited statute.

Your third question is answered in the negative.

With regard to your fourth question, I find no provision in the law requiring an applicant for a renewal of his license to submit a blood test report, hence your question is answered in the negative.

BEAUTY CULTURE LAW

March 26, 1949.—049-123.

**JUNIOR OPERATORS—CERTIFICATE OF REGISTRATION—
REQUIREMENTS**

QUESTION: Can we require an applicant who fails in only one or two subjects in the practical examination to return to school for fifty hours in preparation for retaking the examination?

To: Miss Ethel M. Manning, Executive Secretary, State Board of Beauty Culture, Tallahassee, Florida:

.....

Section 477.07 (2), relates to the qualifications of junior operators

and provides that an applicant for a certificate of registration to practice as a junior operator, who fails to pass a satisfactory examination is required to complete a further course of study and practice of not less than fifty hours for each subject failed. Said course of study to be completed within two months.

..... it is my opinion that the board may require an applicant to comply with the foregoing requirements before being admitted to a re-examination.

February 8, 1950.—050-56.

**UNREGISTERED OPERATOR—STATE EMPLOYMENT—FLORIDA
FARM COLONY—§477.05, F. S. '41**

QUESTION: May the Board of Commissioners of State Institutions employ an unregistered beauty operator for the Florida Farm Colony when she confines her beauty operator work to inmates of the said farm colony?

To: Board of Commissioners of State Institutions, Florida Farm Colony Division, Gainesville, Florida:

This question appears to be answered in the affirmative by Section 477.05, Florida Statutes, which provides in part that the provisions of the beauty culture law "shall not be construed to apply to . . . persons employed in state or local institutions, or hospitals, as beauticians."

March 20, 1950.—050-134.

**STATE BOARD OF BEAUTY CULTURE—BEAUTY OPERATOR
CERTIFICATES—PRACTICE ON OWN RACE ONLY—
RESTRICTIONS—NO AUTHORITY**

QUESTION: Should the Board of Beauty Culture comply with Florida Beauty College's request to stamp all certificates, as follows: "Examination given and certificate issued to practice on own race only?"

To: Miss Ethel Manning, Executive Secretary, State Board of Beauty Culture:

.....
Therefore, this question must be answered in the negative.

OUTDOOR ADVERTISERS

November 4, 1949.—049-543.

**MOTEL OPERATORS—BILLBOARD—JOINT ADVERTISERS—NO
LICENSE REQUIRED—§§479.04, 479.07, FLORIDA STATUTES**

QUESTION: Where two motel operators enter into an agreement whereby each pays a pro rata share of the expense of erecting a billboard which they jointly own, does the fact that each operator advertises his establishment on one side of such billboard require that they or one of them obtain an outdoor advertiser's license under Section 479.04, Florida Statutes?

To: Honorable Max Denton, Division of Outdoor Advertising, State Road Department:

.....
Your question is, therefore, answered in the negative.

MASSEURS AND MASSEUSES

February 10, 1949.—049-53.

STATE BOARD OF MASSAGE—EXAMINATIONS—CITIZENSHIP
AND RESIDENCE REQUIREMENTS—AUTHORITY NOT VESTED
IN BOARD TO WAIVE RESIDENCE REQUIREMENTS

QUESTION: Does the Board of Massage have the authority to waive the citizenship and residence requirement, and admit an applicant who is not a citizen of the United States or the state of Florida to the examination?

To: *Honorable Frank S. Wright, Assistant to Governor, Tallahassee, Florida:*

.....

There appears to be nothing in the statutes creating and regulating the Board of Massage that gives said Board the authority to waive this requirement.

July 20, 1949—049-330.

STATE BOARD MEDICAL EXAMINERS—MASSEURS—COLONIC
IRRIGATIONS NOT PROHIBITED—CHAPTER 480,
FLORIDA STATUTES

QUESTION: Is a registered masseur, under Chapter 480, Florida Statutes, permitted to give colonic irrigations?

To: *Honorable George Warney, Secretary-Treasurer, Florida Board of Massage, Miami, Florida:*

.....

It is my opinion that colonic irrigations may be given by a registered masseur.

December 31, 1949—049-613.

REGISTRATION OF ALIEN—APPRENTICE CERTIFICATE—REQUI-
SITES FOR EXAMINATION—§480.06, FLORIDA STATUTES

QUESTIONS: 1. Is an alien, who has served honorably in the military or naval forces of the United States during the recent war and prior to December 28, 1945, entitled to be registered by the Florida Board of Massage?

2. May the Florida Board of Massage issue an apprentice certificate to a person who has served honorably in the military or naval forces of the United States during the recent war and prior to December 28, 1945?

To: *Mr. Eric L. Wickman, Florida Board of Massage:*

.....

Therefore, answering your first question, it is my opinion that until and unless the applicant has become a United States citizen, the Florida Board of Massage has no legal authority to register such person and issue to him a certificate of registration.

..... The law does not require such apprentice to be a citizen of the United States, however the Board should approve only persons

for apprenticeship who have taken out papers for United States citizenship and who in all probability will become citizens prior to the termination of their apprenticeship service. Subject to the above observation, the answer to your second question is in the affirmative.

May 19, 1950—050-243.

**MESSAGE REGISTRATION ACT OF 1943—LICENSED BEAUTICIANS
—EXEMPT—§480.03(4), FLORIDA STATUTES APPLICABLE**

QUESTION: Is a registered beautician who is engaged in the giving of cabinet baths exempt from the registration under the Massage Registration Act of 1943?

To: Honorable T. Harold Williams, County Solicitor, West Palm Beach, Florida:

.....

Therefore, in view of the above, your question must be answered in the affirmative, if the giving of such baths are authorized under the state beautician law.

October 12, 1950—050-489.

**MASSEUR—MORAL CHARGE—LICENSES—REVOCATION—SUS-
PENSION—PROCEDURE FOR—SECTIONS 480.11 (g),
480.12, FLORIDA STATUTES APPLICABLE**

QUESTION: Is conviction of a certain moral charge (further described in the attached file) by the Civil Service Board of Miami, Florida, to be considered a conviction of a *felony* by a *Court of competent jurisdiction* as contemplated by Section 480.11(b), Florida Statutes?

To: Honorable Eric L. Wickman, Secretary-Treasurer, Florida Board of Massage, Miami, Florida:

.....

..... Your question is answered in the negative.

Other grounds for revoking, suspending or annulling licenses are set forth in Section 480.11, and due to the circumstances involved, specific attention is called to subsection (g). Procedure for revocation, suspension, etc. as set forth in Section 480.12 should be strictly followed.

STRUCTURAL PEST CONTROL

November 21, 1949—049-554.

**STRUCTURAL PEST CONTROL BOARD—TWO-YEAR MEMBER
ELIGIBLE FOR THREE-YEAR TERM—GOVERNOR HAS
POWER TO APPOINT**

QUESTION: Is a person who was appointed and served a two-year term as a member of the first structural pest control board "selected" by the Governor, in pursuance of Section 482.07, Florida Statutes, eligible for appointment by the Governor to succeed himself as a member of said board?

To: *Honorable Fuller Warren, Governor:*

.....
 in my opinion the question is answered in the affirmative; that is to say, that a two-year member of the first structural pest control board is eligible for appointment by the Governor to a three-year term to succeed himself as a member of such board.

MEDICAL TECHNOLOGY

May 2, 1950—050-227.

BASIC SCIENCES, STATE BOARD OF EXAMINERS—MEDICAL LABORATORY—PROPRIETORS—FEES—STATE BOARD OF HEALTH—ENFORCEMENT EXPENSES—CHAPTER 483, FLORIDA STATUTES

QUESTIONS: 1. Do all individuals who have become licensed as medical technology directors under the provisions of Chapter 25069, Laws of Florida, Acts of 1949 (now Chapter 483, Florida Statutes), have to pay the \$20 annual registration fee, or is this an inspection fee which pertains to each laboratory?

2. If medical technology directors who are licensed under the provisions of the above Chapter but who are not owners or proprietors of a medical laboratory are not required to pay this \$20 annual registration fee, then what annual registration fee, if any, are such medical technology directors required to pay?

To: *M. W. Emmel, D. V. M., Secretary, Board of Examiners in the Basic Sciences, Gainesville, Florida:*

.....
 From these provisions of the law, it is my opinion that the \$20 required under Section 483.16 of the statutes is to be paid only by the owner or proprietor of the medical laboratory, regardless of the number of medical technology directors or medical technologists that may be employed in such laboratory and that this money goes to the State Board of Health for supervision, inspection and other necessary enforcement expenses.

It is my further opinion that Section 483.17, Florida Statutes, intends to take in every kind of medical technologist, directors or otherwise, and that each of these persons must pay an annual renewal fee of \$5.00 in order to remain in good standing and to hold a valid license to practice medical technology under the provisions of Chapter 483, Florida Statutes.

June 16, 1950—050-297.

BASIC SCIENCES, BOARD OF—MEDICAL TECHNICIANS—PRACTITIONERS—HEALING ARTS—LICENSES

QUESTION: Is it mandatory for the Board of Basic Sciences to issue a license as a medical technologist or a medical technologist director to a person or persons exempted in Section 483.03, Florida Statutes?

To: *Honorable M. W. Emmel, Secretary, Board of Examiners in the Basic Sciences, Gainesville, Florida:*

..... your question must be answered in the negative.

DISPENSING OPTICIANS

June 6, 1950—050-276.

DISPENSING OPTICIANS, FLORIDA STATE BOARD OF—APPLICANTS—LICENSE QUALIFICATION—RULES—REGULATIONS—CHAPTER 484, FLORIDA STATUTES

QUESTIONS: 1. May the board accept an application for license presently made by a dispensing optician to be issued without examination as to the applicant's qualification?

2. To what extent did a regulation promulgated and adopted by the board extending the time within which a practicing optician might be granted a license without examination upon the expiration of the period of time prescribed by Section 484.07, Florida Statutes, confer such privilege upon an applicant whose application was submitted after the expiration of the period of extension?

To: *Dr. Leon St. John, Chairman, Florida State Board of Dispensing Opticians, Tampa, Florida:*

..... The first question is accordingly answered in the negative.

..... The question is, therefore, answered in the negative.

LAUNDRY AND DRY CLEANERS

January 4, 1950—050-9.

INSURANCE—SURETY BOND—ENGAGING IN BUSINESS—CHAP. 25583, ACTS OF 1949

QUESTIONS: 1. May persons engaged in the laundry or dry cleaning business, within the purview of Chapter 25583, Laws of Florida, Acts of 1949, furnish evidence of carrying a bailees' or customers' floater insurance policy in the principal sum of one thousand dollars, in lieu of a bond as provided in and by said act?

2. Is a person who maintains a station or place of business, where laundry and dry cleaning may be left to be sent to some other place to be laundered or dry cleaned and returned, and who collects for such work, but who does no laundry or dry cleaning work himself, engaged in a laundry or dry cleaning business as contemplated by said Chapter 25583, Laws of Florida, Acts of 1949?

To: *Honorable C. M. Gay, State Comptroller:*

..... The first question above should, therefore, be answered in the negative, at least until the validity of the said act is passed upon by the courts.

..... We, therefore, until the question is definitely settled by the courts, hold that the second question should be answered in the affirmative.

.....

CHAPTER XXIX

REGULATION OF TRADE, COMMERCE AND INVESTMENTS

FOOD, DRUGS AND COSMETICS

April 11, 1949—049-153.

DRUGS—HOSPITAL STOCKS—LEGALLY LABELED CONTAINER— ADMINISTRATION BY QUALIFIED NURSE

QUESTION: Does Section 15(k), Florida Food, Drug and Cosmetic Law prohibit the administration by a hospital nurse to a patient of drugs enumerated therein, under the direction of a registered physician, and upon his written prescription where the drug prescribed is issued from the drug supply room maintained by such hospital and charged to the patient as a part of professional treatment?

To: Honorable Nathan Mayo, Commissioner of Agriculture:

.....
The question is accordingly answered in the negative.

In so far as this opinion may be at variance with opinion rendered on March 9, 1942, the former opinion is superseded.

MILK COMMISSION

September 6, 1950—050-434.

STATE MILK COMMISSION—MILK INDUSTRY—ESTABLISH AND SUPERVISE MARKET AREAS—KEY WEST, MONROE COUNTY—AUTHORITY—CHAPTER 501, FLORIDA STATUTES

QUESTION: Is it within the power and authority of the State Milk Commission to establish and supervise the milk industry in Key West and Monroe County, when there is no milk produced in said city and county?

To: Hon. L. K. Nicholas, Jr. Administrator, State Milk Commission:

.....
In view of the fact that Key West or Monroe County has no producers, and should said city and county be placed in a market area wherein there are no producers of milk in any of said area, it is my opinion that the provisions of Chapter 501 may not be invoked by the Milk Commission.

Although it appears that Key West and Monroe County have no milk producers, I know of no reason why under the provisions of Chapter 501, Florida Statutes, the milk commission could not if it so desired place Key West in the same market area along with Miami and Dade County where the producers who supply Key West are located.

In that event, I am of the opinion that your question should be answered in the affirmative.

HOTEL COMMISSION

January 24, 1949—049-29.

BUTANE GAS HEATERS—OLD AND NEW—OVERNIGHT CABINS, VENTING OF—RULE 1105

QUESTIONS: 1. Under Rule 1105 of the State Hotel Commission, is it required that butane heaters be vented to the outside of the cabins?

2. Does the rule apply to old or new construction, or both?

3. Does the rule apply to all gas heaters?

To: *Hon. J. T. Landon, State Hotel Commissioner, Tallahassee, Florida:*

.....

It is my opinion that the rule requires that the heaters be vented to the outside of the cabin.

The rule applies both to old and new construction.

Excepted from the rule are gas heaters which are not provided with vent outlets from the combustion chambers.

February 4, 1949—049-42.

RESTAURANT IN PARK—ERECTION AND OPERATION BY FLORIDA BOARD OF FORESTRY AND PARKS—NO LIABILITY FOR BUILDING PERMIT FEE AND LICENSE FEE TO THE STATE HOTEL COMMISSION

QUESTIONS: 1. Is the Board of Forestry and Parks liable for the payment of a building permit fee to the Hotel Commission?

2. Is the Board liable for license fee for operating a restaurant?

To: *Honorable James T. Landon, Hotel Commissioner, State Hotel Commission, Tallahassee, Florida:*

.....

..... both questions are answered in the negative.

May 6, 1949—049-199.

STATE OR AGENCY OWNED VEHICLES—STATE NOT LIABLE FOR PUBLIC LIABILITY OR PROPERTY DAMAGE

QUESTIONS: 1. We operate 20 state cars used by our inspectors in official business. In the event one of them should have an accident in a state owned car while on official business, can the Hotel Commission be sued for property damage and public liability?

2. We have 19 inspectors who use their own cars while performing official business and are paid mileage. In the event one of them should have an accident in their own car while on official business, can the Hotel Commission be sued for property damage and public liability?

To: Honorable James T. Landon, Hotel Commissioner:

The state, which includes state agencies, cannot be held liable for torts committed by its officers or employees. This applies to both of your questions. The officer or employee may be personally liable.

May 6, 1949—049-200.

HOTELS—DINING ROOMS—RESTAURANTS—REGULATIONS— SERVING NEGROES

QUESTION: Is there any rule or regulation of the State Hotel Commission which prohibits Negroes from being served in hotel dining rooms or restaurants?

To: Hon. J. T. Landon, State Hotel Commissioner:

On examination of your rules and regulations, I find that your agency has made no rule or regulation on this subject.

May 25, 1949—049-229.

REGULATIONS—WORD "EQUIPMENT" NOT TO—COVER AUTOMOBILES

QUESTION: Does the word "equipment" in Section 509.05, page 5 of State Hotel Commission book of rules, cover automobiles used by the inspectors in their daily inspection of restaurants, hotels, apartment houses, rooming houses and motor courts?

To: Honorable J. T. Landon, State Hotel Commissioner:

I construe the word "equipment" in Section 509.05, Florida Statutes of 1941, to be restricted to office equipment. Accordingly, it is my opinion that the word in that section does not cover automobiles used by your inspectors.

October 21, 1949—049-506.

STATE HOTEL COMMISSION—CONVALESCENT HOMES—SANATORIA—NURSING HOMES—ETC.—NO JURISDICTION

QUESTION: Does the State Hotel Commission have jurisdiction over convalescent homes, sanatoriums, nursing homes, and other establishments in this category?

To: Hon. J. T. Landon, State Hotel Commissioner, Tallahassee:

..... The jurisdiction of the State Hotel Commission does not extend over such institutions.

February 9, 1950—050-57.

TAXATION—BUILDINGS ON LEASED LAND—HEALTH AND SANITATION

QUESTION: Where five hundred and fifty units consisting of single dwellings, duplex, four-family and eight-family apartments are constructed by a private corporation upon property held by the United States as a military reservation, under a lease of the real

estate from the government, is such subject within the jurisdiction of the State Hotel Commission?

To: *Honorable J. T. Landon, State Hotel Commissioner:*

.....

I am of the opinion that the question is to be answered in the affirmative.

HOTELS

March 10, 1949.—049-98.

REVOKING LICENSES FOR ILLEGAL OPERATIONS, BOOK- MAKERS, SLOT MACHINES—BEDDING LAW REQUIREMENTS

QUESTIONS: 1. Is there a bedding law requiring manufacturers selling slip seats in this state to have a registration number and inspection stamps?

2. Under the Governor's recent edict to close up all slot machines and bookie joints, does the Hotel Commission have the authority to revoke a hotel or apartment license if this illegal practice is going on in the establishments?

To: *Honorable J. T. Landon, State Hotel Commissioner, Tallahassee, Leon County, Florida:*

..... your first question is answered in the negative.

..... Your second question is answered in the negative.

March 29, 1949.—049-133.

STATE AGENCY—RESTAURANT BUILDING IN PARK—LEASED— RESTAURANT OPERATOR LIABLE FOR LICENSES, INSPECTION FEES

QUESTION: In the event a State agency, which constructed and owns a restaurant building in a public park, should lease the building to a private individual for the operation of a restaurant, is it the duty of the State Hotel Commission to make the usual inspections and charge the license inspection fee?

To: *Honorable James T. Landon, State Hotel Commissioner, Tallahassee:*

Under the circumstances stated in your question, the operator of the restaurant would be liable for all licenses and fees to the same extent as any other private individual.

July 15, 1949.—049-323.

RECORDS OF GUEST ARRIVAL, REGISTRATION, DEPARTURE— PRESERVATION—TIME LIMIT—DISCRETION HOTEL OPERATOR

QUESTION: How long is it necessary for hotels to keep their guest arrival and departure book and guest registration cards or record?

To: *Honorable J. T. Landon, Hotel Commissioner:*

There appears to be no law of this State which requires the keeping of arrival and departure records or registration cards or other

registers of guests. Accordingly, the length of time that such records are preserved is a matter which is left to the discretion of the hotel operator.

HOTELS, RESTAURANTS, APARTMENTS, REGULATIONS

April 1, 1949.—049-137.

APARTMENTS—OPERATION ON COOPERATIVE OWNERSHIP PLAN—INFORMATION AVAILABLE—JURISDICTION OF STATE HOTEL COMMISSION

QUESTION: There is proposed a large apartment building to be operated on a cooperative ownership plan. It will contain between eighty and one hundred apartments. The only information available indicates that the apartments will be sold and may be resold or leased by the respective purchasers. There will be rooms for common use, such as lobby, dining room, cocktail lounge, card room, and other facilities for common use of the owners of the apartments. An executive manager will be in charge under a Board of Directors selected by the owners of the apartments. Expenses of operation will be pro rated among owners of the apartments. Does such a cooperative apartment come under the jurisdiction of the Hotel Commission?

To: Honorable J. T. Landon, State Hotel Commissioner:

.....

From information presently available, it does not appear that the building would come within the jurisdiction of the Hotel Commission unless more than two of the apartments should be leased or rented by the promoter or owner of the project, or cooperative owners as a group.

April 9, 1949.—049-151.

CHIROPRACTORS—NATUROPATHS—QUALIFIED ISSUE HEALTH CERTIFICATES REQUIRED BY STATE HOTEL COMMISSION

QUESTION: Are naturopaths and chiropractors qualified to issue the health certificates referred to in Section 511.34, Florida Statutes of 1941?

To: Honorable James T. Landon, State Hotel Commissioner:

.....

In several opinions in 1941 and 1942 my predecessor held that naturopaths and chiropractors were qualified to make these health certificates. And see *State vs. Baltzell*, 197 So. 783.

I concur in those opinions.

June 3, 1949.—049-305.

STATE HOTEL COMMISSION—APARTMENTS—JURISDICTION OF —LICENSE FEES REQUIRED

QUESTION: Do apartments which are furnished by tenants come within the jurisdiction of the Hotel Commission and require payment of license fees?

To: Honorable J. T. Landon, State Hotel Commissioner:

.....

Apartment houses furnished by the tenants are included within

the above definition and therefore, come within the jurisdiction of the Hotel Commission and must pay license fees.

July 15, 1949.—049-334.

HOTEL COMMISSION—HOTELS—UNETHICAL PRACTICES—USE OF MISLEADING ADVERTISEMENTS—NO AUTHORITY

QUESTION: Has the Hotel Commission authority to stop unethical practices by hotels in the use of misleading signs and advertisements?

To: Honorable J. T. Landon, Hotel Commissioner:

..... it appears that such misleading and deceptive advertising would not authorize suspension or revocation of a license by your Commission.

Section 817.06, Statutes of 1941, known as "Printers Ink Model Statute," prohibits misleading advertisements and makes violation of the statute a misdemeanor, punishable by fine and imprisonment. In the event you should observe violation of that statute, you would have the same right as any other citizen, to call it to the attention of the regular prosecuting officers of the county where the violation occurred if you should see fit to do so.

August 24, 1949.—049-394.

STATE HOTEL COMMISSION—HOUSING PROJECT—ROOSEVELT APARTMENTS, INC.—NO JURISDICTION

QUESTION: Does the housing project described below come under the jurisdiction of the State Hotel Commission?

To: Honorable J. T. Landon, State Hotel Commissioner:

..... It is my opinion that the housing project described does not come under the jurisdiction of the State Hotel Commission.

October 11, 1949.—049-489.

HOTEL COMMISSION—REGULATION—LICENSES REVOCATION UNDER §509.04, 511.05—VIOLATIONS §§511.43, 511.44, F. S.

QUESTION: May the hotel commissioner under authority of Sections 509.04 and 511.05, Florida Statutes, provide by regulation for revocation of licenses issued to hotels, apartment houses, rooming houses or restaurants for violation of Sections 511.43 or 511.44, Florida Statutes?

To: Honorable J. T. Landon, Hotel Commissioner:

..... the question is answered in the negative.

HOTELS, RESTAURANTS AND DINING CARS; REGULATIONS

January 23, 1950.—050-30.

**ATHLETIC CLUB, NON-PROFIT—ROOMING HOUSE—RESTAURANT—JURISDICTION OF HOTEL COMMISSION—
SEC. 511.01 (3)**

QUESTION: Where a non-profit athletic club maintains and operates premises in which are located four bedrooms available for

occupancy by members and serves meals to members, is it subject to the jurisdiction of the State Hotel Commission?

To: *Hon. J. T. Landon, State Hotel Commissioner:*

For the purpose of this opinion, it is assumed that the rooming and dining privileges as well, as the other facilities of the club are restricted exclusively for the use of its members, and are in nowise available to the general public.

I therefore reach the conclusion, based upon the assumption stated above, that in neither instance does the State Hotel Commission have jurisdiction.

January 23, 1950.—050-31.

EFFICIENCY APARTMENTS—DEFINITION OF APARTMENT
HOUSE—JURISDICTION OF HOTEL COMMISSION—
§511.01, F. S. '41

QUESTION: Where ten separate buildings of four rooms each, are constructed and rented as efficiency apartments, (that is, each room constitutes a separate apartment in itself) the duration of tenancy being for a period of four months, are these units apartment houses within the meaning of Section 511.01, Florida Statutes, 1941?

To: *J. T. Landon, State Hotel Commissioner:*

.

I am of the opinion that these buildings constitute separate apartment houses within themselves and are therefore subject to the jurisdiction of the Hotel Commission.

March 4, 1950.—050-110.

HOTEL COMMISSION—SUPERVISING ARCHITECT—EXCESS
FEES—CLAIM INVALID

QUESTION: Where fees in excess of the maximum compensation of \$150.00 monthly, are earned by a supervising architect employed by the State Hotel Commission, such excess fees being credited upon the books of the Commission to the account of such architect earning them, does the architect have a valid claim against the Hotel Commission for such excess fees?

To: *Honorable J. T. Landon, State Hotel Commissioner:*

.

It is therefore, my opinion that if it can be definitely established that such excess fund was derived from fees, the question is to be answered in the negative.

April 19, 1950.—050-206.

RESTAURANTS—VARIOUS LOCATIONS IN FLORIDA—ONE HOTEL
LICENSE NOT PERMITTED—§511.03, FLORIDA STATUTES
APPLICABLE

QUESTION: May one restaurant license be used for various locations in Florida?

To: *Honorable J. T. Landon, State Hotel Commissioner:*

.....

Your question is therefore answered in the negative.

July 27, 1950.—050-365.

STATE HOTEL COMMISSION—PUBLIC HOUSING AUTHORITIES—
LICENSE AND BUILDING FEES—EXEMPTIONS—\$423.02, FLORIDA
STATUTES APPLICABLE

QUESTION: Plans and specifications are being prepared by the City of for a low rent housing project to be constructed and operated by the Housing Authority of that city under agreement with the Public Housing Administration. Will the property be subject to construction permit and licensing by the State Hotel Commission?

To: *Honorable J. T. Landon, State Hotel Commissioner:*

.....

Your question requires a negative answer.

September 11, 1950.—050-440.

STATE HOTEL COMMISSION—PUBLIC LIABILITY INSURANCE—
BOARD OF CONTROL—UNIVERSITY OF FLORIDA—RENTAL OF
ROOMS—\$511.01, FLORIDA STATUTES NOT APPLICABLE

QUESTIONS: (1) Is it necessary for the Board of Control to carry public liability insurance in connections with the renting of rooms in the Florida Union Building to University guests, alumni, guests of students, etc.?

(2) Is it necessary for the Board of Control to register these room facilities with the State Hotel Commission?

To: *Board of Control, Tallahassee, Florida:*

.....

The State and its agencies are not liable for injury to the person or property of persons occupying its premises either gratuitously or for compensation, and there would, therefore, be no obligation or authority to obtain public liability insurance in the absence of statute.

.....

..... There appears to be nothing within the statute under consideration (§511.01 F. S. '49) which indicates an intention to include the State or its agencies, and your second question is answered in the negative.

September 27, 1950.—050-456.

STATE HOTEL COMMISSION—HEATING EQUIPMENT—TENANT
OR LANDLORD—SAFETY REGULATIONS REQUIRED—SECTION
511.05, FLORIDA STATUTES

QUESTION: Where the heating equipment is owned by the tenant, and not by the landlord, may the State Hotel Commission revoke the landlord's license, if the heating equipment does not meet State Hotel Commission's safety regulations?

To: *Honorable J. T. Landon, State Hotel Commissioner:*

The purpose of the safety regulations and their enforcement is the protection of the premises and the people occupying them. You are concerned with their safety, not the ownership of the equipment. You have the same right to enforce the regulation whether the heating equipment is owned by the tenant or the landlord.

November 22, 1950.—050-536—050-440.

HIGH SCHOOL STUDENT COUNCIL—LUNCH COUNTER ON FOOTBALL FIELD—HOTEL COMMISSION NO JURISDICTION

QUESTION: Does a lunch counter operated by the High School Student Council on the school football field to sell food to the public during football games, come under the jurisdiction of the State Hotel Commission?

To: *Honorable W. A. Weatherford, Chief Deputy Commissioner, State Hotel Commission:*

.....

..... Your question is therefore answered in the negative.

SMALL LOAN BUSINESS

June 8, 1950.—050-280.

**SMALL LOAN LICENSEE—NOMINATED ATTORNEY BY BORROWER—MOTOR VEHICLES—SALE—TITLE TRANSFER—
§516.16, FLORIDA STATUTES APPLICABLE**

QUESTION: May a small loan licensee be legally nominated attorney in fact by a borrower, to assign and transfer in the borrower's name certificate of title to a motor vehicle, pledged to such licensee as security for a loan, upon becoming lawfully possessed of the vehicle by reason of the failure of the borrower to discharge his obligation of payment of the loan in accordance with the terms of the contract of pledge, with lawful authority to sell and transfer title thereto to a bona fide purchaser?

To: *Hon. C. M. Gay, State Comptroller:*

.....

Under the provisions of Section 516.16, therefore, and until such time as the issue may be resolved by the Supreme Court, in my opinion your question must be answered in the negative.

SALE OF SECURITIES

March 9, 1949.—049-94.

**FLORIDA SECURITIES COMMISSION—AGENTS AND SALESMEN—
APPLICANTS—REGISTRATION—NO STATUTORY PROVISION
REQUIRING EXAMINATION**

QUESTION: May the Florida Securities Commission, under its administrative powers provided in Chapter 517, Florida Statutes, promulgate rules and regulations requiring a written or oral examination of all applicants for registration as agents and salesmen as a prerequisite to such registration?

To: *The Florida Securities Commission, Tallahassee, Florida:*

..... it seems that the only examination authorized by the statutes, of applicants for registration as dealers or salesmen, by the commission is as to their honesty and good business repute. This examination may relate to the applicant's previous history, record and association in so far as they relate to the honesty and good repute in business of the applicant. (Section 517.12, Florida Statutes); but we find no authority for extending it to the general knowledge of the applicant to the business of selling or dealing in securities. This seems to give a qualified answer to the question.

March 26, 1949.—049-125.

FLORIDA SECURITIES COMMISSION—MINUTES PUBLIC PROPERTY—REPORTS—RECORDS—ONLY BY COURT ORDER

QUESTIONS: 1. Should the public be furnished with copies of, or have access to, reports of the examiners to the commission concerning the acts and doings of persons and corporations with regard to the Florida securities statutes?

2. Should the public be furnished with copies of, or have access to, letters written by the commission or under its authority to persons and corporations concerning the said securities statutes?

3. Should the public be furnished with copies of, or have access to, the minutes of the meetings of the commission?

To: *The Florida Securities Commission, Tallahassee, Florida:*

..... In the light of the above observations and authorities we are of the opinion that the commission should:

1. Refuse to permit the public to inspect or have copies of the reports of its examiners concerning violations or possible violations of the securities laws of this State, unless and until directed to do so by the order of a court of competent jurisdiction. This seems to answer the first question.

2. In connection with letters written by the commission or under its authority, the commission should likewise refuse to permit the public to inspect or have copies of such letters whenever such letters relate to investigations or to information or possible information concerning violations of the securities laws of this State. This seems to be a matter wherein the commission must use its discretion. This seems to answer the second question.

3. The minutes of the commission appear to be public records to which the public should have access for the purpose of inspection and the taking of copies. Instruments referred to in the minutes need not be a part of them, so as to make them a part of said minutes. This seems to answer the third question.

June 15, 1949.—049-258.

COOPERATIVE ASSOCIATIONS—STOCK—SECURITIES—REGISTRATION—SALE BY REGISTERED DEALER REQUIRED

QUESTIONS: 1. Are cooperative associations, organized under Chapter 611, Florida Statutes, required to register their stock and other

securities, under Chapter 517, Florida Statutes, prior to offering the same for sale in this state?

2. Must such stock and securities be sold by or through a dealer duly registered under said Chapter 517, Florida Statutes?

To: Florida Securities Commission:

..... Finding nothing in the file before me indicating that the contemplated sales are exempt transactions within said Section 517.06, the first question is answered in the affirmative unless further investigation reveals the sale to be an exempt transaction.

..... This seems to answer the second question in the affirmative, unless further investigation reveals the sale to be an exempt transaction.

December 6, 1949.—049-575.

FLORIDA SECURITIES COMMISSION—SECURITY DEALERS—
SALES AGREEMENTS—CHAPTER 517, FLORIDA STATUTES
APPLICABLE

QUESTION: Should a registered dealer of securities, under the provisions of Chapter 517, Florida Statutes, be permitted to use a sales agreement wherein and by which a sale of securities in this state is to be governed by the laws of another state?

To: Florida Securities Commission:

..... we feel that the commission would be within its rights by requiring that registered dealers refrain from including stipulations in their sales agreements which may have the effect of evading the statutes of this state governing the sale of securities in this state. Such stipulations might violate a settled public policy of this state as expressed in Chapter 517, Florida Statutes.

December 30, 1949.—049-619.

FOREIGN SECURITIES—STATE OF ISRAEL—EXEMPTIONS—
SECTION 517.05

QUESTION: Do the provisions of Subsection (10) of Section 517.05, Florida Statutes, apply to securities issued by a corporation organized and existing under the statutes of a foreign country, such as the new State of Israel?

To: Florida Securities Commission:

..... In the light of the above observations it seems that the above question should be answered in the affirmative.

February 8, 1950.—050-72.

PROFIT SHARING VENTURE—CERTIFICATES OF INTEREST—
CONTRACTS OFFERED TO PUBLIC—CHAPTER 517, F. S. '41

QUESTION: Where a person engaged in the production of crops in this state offers to enter into contracts or agreements, with the general public, wherein and whereby such person, in consideration of a

sum certain loaned, advanced or paid to him, agrees to prepare the lands for certain crops, cultivate the crops thereon, and harvest and market the same, and, after paying all expenses and costs in connection with such operation, agrees to repay the sum so loaned, advanced or paid to him as aforesaid, and to share the profits from the farming venture with the person putting up such money, are such contracts or agreements securities subject to regulation under Chapter 517, Florida Statutes?

To: Florida Securities Commission:

.....
In the light of the above and foregoing authorities, and the many cases on like and similar questions collected in 163 A.L.R. 1081 et seq., we are of the opinion that the above question should be answered in the affirmative, when such contracts or agreements are being offered to the general buying public.

September 15, 1950.—050-445.

FLORIDA SECURITIES COMMISSION—FOSGATE CITRUS CON-
CENTRATE COOPERATIVE—SALE OF STOCK—REGISTRATION—
CHAPTER 517, FLORIDA STATUTES

QUESTIONS: 1. Are agricultural cooperative marketing associations, organized under Chapter 618, Florida Statutes, required to register their stock and other securities under Chapter 517, Florida Statutes, prior to offering the same for sale in this State?

2. Must such stock and securities be sold by or through a dealer duly registered under said Chapter 517, Florida Statutes?

To: Florida Securities Commission:

.....
..... Finding nothing in the file before me indicating that the contemplated sales are exempt transactions within said Section 517.06, the first question is answered in the affirmative unless further investigation reveals the sale to be an exempt transaction.

The State has ample authority to legislate for the protection of buyers of stocks and securities from persons engaged in selling them, whether as owners or agents or brokers for the owners (*State v. Minge*, 119 Fla. 515, 160 So. 670, text 675.) Any issuer of a security required to be registered under said Chapter 517, Florida Statutes, selling such securities, except in exempt transactions, is deemed a dealer within the meaning of Section 517.12, Florida Statutes, relating to the registration of dealers and salesmen, and is required to comply with all the provisions thereof. This seems to answer the second question in the affirmative, unless further investigation reveals the sale to be an exempt transaction.

September 15, 1950.—050-446.

SECURITIES—MUNICIPALITY—REFUNDING BONDS—EXCHANGE
AGENT—COMMISSIONS—"DEALER"—CHAPTER 517,
FLORIDA STATUTES, APPLICABLE

QUESTION: Where a municipality in this State decides to issue refunding bonds in lieu of certain existing and outstanding bonds,

and in this connection enters into an agreement with an individual to act as exchange agent, who is by said agreement obligated to place a bid of par and accrued interest as to all refunding bonds offered for sale and who is also by said agreement authorized to deal in such outstanding and refunding bonds for his own account, and who for his services for the municipality received a commission, is such exchange agent a "dealer" within the purview of Chapter 517, Florida Statutes?

To: Florida Securities Commission:

.....

In the light of the above facts and circumstances, the provisions of the contract between the municipality and the said exchange agent, and the applicable statutes, we feel that the said exchange agent is a dealer in securities within the intent and purview of Chapter 517, Florida Statutes. This seems to answer the above question in the affirmative.

December 15, 1950.—050-563.

HOUSING AUTHORITY BONDS—EXAMINATION—EXEMPTION UNDER §517.05, FLORIDA STATUTES

QUESTION: Are bonds and other obligations issued by public housing agencies, as defined in Subsection (11), Section 1403, Title 42, United States Code, exempt securities within the purview of Section 517.05, Florida Statutes?

To: Florida Securities Commission:

.....

..... Under the statutes of this State public housing agencies are neither a subdivision nor an agency of the State. We feel that it was the intention of the Legislature to exempt only those bonds and other obligations that are issued by the State itself, a county or other subdivision of a state, or an agency of a state acting for and in behalf of the state creating it. Unless the public housing agency issuing the bonds or obligations in question is acting for and in behalf of a state, for and in behalf of a county, or for and in behalf of a subdivision of the State we do not feel that it is within the exemption. If the public housing agency is a separate agency, although existing under statute, acting for itself and not for a state, political subdivision or agency thereof, we do not think that its bonds and obligations are within Section 517.05, Florida Statutes.

Under the conclusions herein reached each issue of bonds must be examined to determine whether they are such as may be exempted under said Section 517.05, Florida Statutes. These observations furnish the formula from which the above question may be answered as to each issue of bonds and obligations.

December 18, 1950.—050-566.

INTERNATIONAL BANK—RECONSTRUCTION AND DEVELOPMENT—SECURITIES EXEMPT UNDER §517.05, FLORIDA STATUTES

QUESTION: Are the bonds and other obligations and securities

issued by the International Bank for Reconstruction and Development exempt securities under Section 517.05, Florida Statutes?

To: Florida Securities Commission:

..... bonds and other obligations and securities above mentioned are within the exemption granted by subsection (3) of Section 517.05, Florida Statutes, so that the above question should be answered in the affirmative.

December 18, 1950—050-567.

FLORIDA SECURITIES COMMISSION—McDONNELL AIRCRAFT CORPORATION STOCK—OUTSTANDING WARRANTS FOR STOCK—REGISTRATION

QUESTION: Where a corporation offers its stock to be registered by the Florida Securities Commission for sale in this State, to be sold at a maximum price of thirty dollars per share, but has outstanding a total of thirty-eight thousand eight warrants entitling the holders thereof to purchase the same class of stock at five dollars per share, what disposition should be made of the application for registration?

To: Florida Securities Commission:

..... in considering the application in question the shares represented by the warrants or options mentioned should be considered as outstanding for the purpose of registration. The commission would probably be within its rights to require that, as a condition to sale of the stock in question in this State, every prospective purchaser thereof be advised of the existence of such warrants or options. These observations seem to answer the above question as well as the same may be answered.

SALE OF LIQUID FUELS

May 16, 1949—049-217.

LIQUEFIED PETROLEUM GAS—INTERSTATE COMMERCE—NAVAL RESERVATION—ULTIMATE CONSUMER

QUESTION: On November 15, 1948, a Florida corporation was awarded contract by proper U. S. Naval authorities to deliver to the U. S. Naval Station, in tank cars, f.o.b. Green Cove Springs, Florida, for a stated period and under stated terms, propane gas for use in connection with a housing project on said naval reservation. The Florida corporation caused said gas to be shipped in tank cars in interstate commerce by producer thereof in another state to the naval reservation at Green Cove Springs, Florida. Is the Navy the "ultimate consumer" of the gas so sold and delivered at the naval station, Green Cove Springs, Florida, within the meaning of Chapter 24302, Laws of Florida, Acts of 1947?

To: Honorable J. Edwin Larson, State Fire Marshal:

Since I agree with the conclusions of Opinion 048-348 of this office delivered by my predecessor on November 24, 1948, dealing with

this same subject, reference is made thereto in order to avoid repetition here of matters therein contained.

.....

In view of the foregoing, in my opinion the above question properly is answered as follows:

This shipment of gas was not a transaction controlled by the provisions of Chapter 24302, Acts 1947; hence the question of whether or not the Navy was the ultimate consumer of the gas is immaterial.

November 5, 1949—049-537.

**LIQUEFIED PETROLEUM GAS—DEALERS IN—SURETY BOND,
LIABILITY INSURANCE, REQUIRED—\$526.14, F. S.
APPLICABLE**

QUESTION: May the bond, or insurance coverage in lieu thereof, required of applicants for license under Section 526.14, Florida Statutes, as amended by Section 1 of Chapter 25105, Laws of Florida, Acts of 1949, be issued by an insurer not admitted to engage in business in this State in pursuance of provisions of Chapter 25414, Laws of Florida, Acts of 1949, provided such surety bond or insurance contract is issued in strict pursuance of the conditions set forth in Section 5 of said Chapter 25414?

To: Honorable J. Edwin Larson, Insurance Commissioner:

.....

..... the question is answered in the negative.

June 9, 1950—050-281.

**LIQUEFIED PETROLEUM GAS—LICENSE TAXES—LICENSEES—
REQUIREMENTS—SECTIONS 526.12-526.20, FLORIDA
STATUTES**

QUESTION: Below are given the methods of operation of certain dealers in liquefied petroleum gas and those engaged in other related businesses as described in and contemplated by Sections 526.12-526.20, Florida Statutes, 1949:

- “(a) Firms which sell only appliances at one location.
- (b) Firms which sell only appliances at multiple locations.
- (c) Firms manufacturing equipment (tanks) and selling them to gas dealers in Florida.
- (d) Firms selling gas, tanks, and appliances and installing appliances at the site of the ultimate consumer. Some have single locations; others have multiple bulk storage locations and operate either under a single name or different names at different locations.
- (e) Firms operating under a franchise designating territory by counties or otherwise, which have multiple bulk storage locations, show rooms and administrative offices. (For example: Green's Fuel).
- (f) Firms which grant a franchise by counties or otherwise to another firm, said franchise permitting the sale of gas in containers owned solely by the firm granting the franchise; the one to whom the franchise is ceded sells appliances to the ultimate consumer and installs them. (For example: Pyrofax).

(g) Firms using only above ground cylinders or tanks and retaining ownership under all conditions; filling the containers with gas and selling same to the consumer through an agent designated, without franchise; this agent has a display room for appliances, sells them to the consumer and installs them."

Under the provisions of Section 526.12-526.20, in those instances as set forth above where it appears that multiple business locations are involved, is a license required for each such location?

To: *Honorable J. Edwin Larson, State Fire Marshal:*

.....
It is to be noted that in the statement which is a part of the question the term "firms" is used. It is to be understood that "person" as defined in Section 526.12 includes every natural person, firm, co-partnership or corporation. To avoid misunderstanding with respect to the businesses here involved, the term "person" is used.

Any person who operates more than one place of business in this state wherein is conducted any of the businesses with respect to which persons are required to be licensed under the provisions of Sections 526.12-526.20, specifically Section 526.13, must pay the license required for such business or businesses, as set forth in Section 526.13, for each such location in Florida.

In those instances where a person is engaged in any of the businesses required to be licensed by these sections in pursuance of a franchise granted him by another person, firm or corporation on and under the terms of such franchise the person receiving the same is in law an independent contractor, such independent contractor as distinguished from the grantor of the franchise must be licensed to conduct all or any of the businesses regulated by these sections in which he engaged in pursuance of such franchise.

MARKS AND BRANDS OF LIVESTOCK

November 2, 1950—050-516.

CATTLE—MARKS AND BRANDS—C. 534, LAWS 1941 REPEALED BY C. 22856, LAWS 1945, NOW C. 534, FLORIDA STATUTES, 1949

Question: Chapter 534, Laws of Florida, 1941, as originally enacted provides for the recording of cattle marks and brands, as well as, the marks and brands of other livestock, in the office of the Clerk of the Circuit Court. Subsequently, Chapter 22856, Laws of Florida, 1945, pertaining to the recording of cattle marks and brands, (now Chapter 534, Florida Statutes, 1949) became law, whereby after excepting certain counties, including Holmes County, from the operation thereof, said Chapter 534, Florida Statutes, 1941, was expressly repealed. Was Chapter 534, Laws of Florida, 1941, repealed in toto or is it presently applicable to Holmes County.

To: *Honorable A. P. Drummond, County Attorney, Holmes County, Bonifay, Florida:*

.....
It is, therefore, my opinion that Chapter 534, Laws of Florida, 1941, was repealed in its entirety by the enactment of Chapter 22856, Laws of Florida, 1945 (presently Chapter 534, Florida Statutes, 1949).

WEIGHTS, MEASURES AND STANDARDS

June 23, 1950—050-308.

**COMMISSIONER OF AGRICULTURE—WEIGHTS—MEASURES—
CORN PURCHASED BY FEED MILLS—CHAPTER 531,
FLORIDA STATUTES APPLICABLE**

QUESTION: 1. Is a contract for the purchase of corn on the cob and in the shuck, by a feed mill in this State at a price based upon eighty pounds to the bushel, a legal contract in the light of the provisions of Chapter 531, Florida Statutes?

2. Have the provisions of Chapter 4975, Laws of Florida, Acts of 1901, been brought forward into the Florida Statutes, and if so by what sections is the said law now reflected?

3. What state or county officer, agency or body is charged with the enforcement of Chapter 531, Florida Statutes, in so far as here applicable?

To: Honorable Nathan Mayo, Commissioner of Agriculture:

.....

1. A contract for the purchase of corn on the cob and in the shuck would seem to be within the purview of Chapter 531, Florida Statutes. In Section 531.01, Florida Statutes, a bushel of corn on the cob with shuck is fixed at "70 pounds avoirdupois." This provision is still in force unless there be a different Federal measure applicable under the provisions of Section 531.16 et seq., Florida Statutes. If there is a different Federal measure applicable under said Sections 531.16 et seq., it would seem to control. It is possible that the weight fixed by Section 531.01, Florida Statutes, has relation to dry corn or corn having not in excess of a fixed percentage of moisture. It would seem that the Commissioner of Agriculture might, under Section 531.18, Florida Statutes, fix rules and regulations in this connection including a tolerance. This seems to be a conditional answer to the first question.

2. The provisions of Chapter 4975, Laws of Florida, Acts of 1901, as amended by Chapter 7314, Laws of Florida, Acts of 1917, appear as Sections 531.01 and 531.02, Florida Statutes, and are still in full force and effect, except in so far as they may have been superseded by weights and measures applicable under Sections 531.16 et seq., Florida Statutes.

3. The Commissioner of Agriculture appears to be the State agency generally charged with the enforcement of Chapter 531, Florida Statutes, except in so far as violations may be criminal in which cases the prosecutions must be carried on by the proper prosecuting officers. The Commissioner may in proper cases proceed by injunction to prevent violations of the statutes relating to weights and measures.

DOG AND HORSE RACING

January 26, 1949—049-30.

**RACING COMMISSIONER—ELIGIBILITY OF FORMER STOCK-
HOLDER TO HOLD OFFICE OF**

QUESTION: Is a person who, within the last three years, has

held stock in a corporation operating, under Chapter 550, Florida Statutes, 1941, a race track in this state, qualified to hold the office of racing commissioner?

To: Hon. Frank S. Wright, Assistant to the Governor, Tallahassee:

..... in my opinion, the question properly is answered in the negative; that is to say, that such a person does not appear qualified to hold the office of racing commissioner.

January 27, 1949—049-32.

RACING COMMISSIONER—ELIGIBILITY OF PERSON HOLDING
STOCK AS TRUSTEE—CORPORATE OPERATION OF
RACE TRACK—§550.01

QUESTION: Is a person who, within the last three years, has held stock as trustees for a named third person in a corporation operating, under Chapter 550, Florida Statutes, 1941, a race track in this state, qualified to hold the office of racing commissioner?

To: Honorable Frank S. Wright, Assistant to the Governor, Tallahassee, Florida:

.....

On the other hand, if such person merely held said stock as an accommodation for the real or beneficial owner, was vested with and exercised no discretion concerning the voting of said stock, had no financial interest in said stock and derived no personal benefit from the holding of said stock, it appears that he would not fall within the above prohibition quoted from Section 550.01; hence, he would be eligible for the office of racing commissioner, if otherwise qualified.

February 23, 1949—049-69.

RACE TRACKS—ESTABLISHED ADMISSION PRICE—STATUTES
REQUIRE PAYMENT OF TAX

QUESTION: When a person, authorized to conduct race meetings under Chapter 550, Florida Statutes, 1941, collects, as an admission tax, 15 percent of the established admission price, or ten cents, whichever sum is greater, from persons attending a race meet, and said admission tax is collected on the established admission price at the *outer enclosure* of said race track, and thereafter *additional admission prices* are charged by said person for admittance to *other places within the enclosure* of said race track, but no additional tax is collected for such other additional admission prices to places within the enclosure of said race track, is said person violating Section 550.09 for failure to collect, as an admission tax an additional 15 percent, or ten cents, whichever sum is greater, of the established additional admission price paid for admission to other places within the enclosure of said race track?

To: Honorable Manuel M. Garcia, Attorney, Florida State Racing Commission, Tampa, Florida:

An opinion was rendered by the Attorney General's Office on December 17, 1935, in reply to the same question (Biennial Report of

Attorney General, 1935-1936, page 487). I concur in the conclusion reached in this opinion. . . .

.

"It is my opinion that all charges made for admission to the race track, such as grandstand, reserve seat, box seat or seat in club house, or other like accommodations, are to be considered under Section 9 of Chapter 17276, (Acts of 1935) as the 'established admission price' and the tax must be paid thereon."

April 28, 1949—049-182.

**CORPORATION—RACE TRACK PRESIDENT—OCCUPATIONAL
LICENSE TAX REQUIRED**

QUESTION: May the Florida State Racing Commission, pursuant to Section 550.10, Florida Statutes, compel the president or general manager of a duly licensed horse track or dog track in this state to pay an occupational license tax?

To: *Honorable Manuel M. Garcia, Attorney for the Florida State Racing Commission, Miami, Florida:*

.

The above question is answered by stating that if the commission finds that the president of a race track takes any active part in the operation of the race track then he should be required to obtain a license under Section 550.10, Florida Statutes, otherwise he is not within the purview of the said statute. The general manager by the very nature of his office would seem to be within the statute.

December 6, 1949—049-573.

**BOARD OF CONTROL—INSTITUTIONS OF HIGHER LEARNING—
SCHOLARSHIPS—TYPE—NO RESTRICTIONS—
CHAPTER 25258, ACTS 1949**

QUESTION: What type of scholarship may the Board of Control establish with the scholarship fund paid into the State treasury under the provisions of Chapter 25258, Laws of 1949?

To: *Board of Control:*

.

. It is my opinion that there are no restrictions on the type or kind of scholarship which may be established with that fund. The type of scholarship to be set up is left to the discretion of the Board.

CHAPTER XXX

LIQUORS AND BEVERAGES

BEVERAGE LAW; ADMINISTRATION

February 10, 1949.—049-52.

VENDOR—LICENSED PREMISES—ESTABLISHED CHURCH— DISTANCE MEASURED SHORTEST ROUTES, PEDESTRIAN TRAVEL ALONG PUBLIC THOROUGHFARE

QUESTION: What is meant by the clause "from the nearest point of the business to the nearest point of the church", in the method of measurement contained in the Statute?

To: *Honorable Lewis M. Schott, Director, Beverage Department, Tallahassee, Florida:*

.....

It is my opinion that the measurement should begin and end at the nearest point of each building to the other, regardless of public entrances into such buildings, said distance between the two buildings to be measured along the public thoroughfare.

March 21, 1949.—049-110.

LIQUOR LICENSE TAX—NOTES, MORTGAGES—NO AUTHORITY TO ACCEPT IN LIEU OF CASH

QUESTION: Is it legal for a town operating under the general laws of the State of Florida to issue a town liquor license to an individual or corporation, receiving payment for same in lieu of cash payment, a note and mortgage (second) with payment in monthly installments?

To: *Mr. Rodney B. Thursby, Councilman, Orange City, Florida:*

.....

..... it is my opinion that a town cannot accept notes or mortgages in payment of this tax.

October 20, 1949.—049-498.

STATE BEVERAGE DIRECTOR—LIQUOR LICENSES—POWER TO APPROVE RENEWALS AFTER OCT. 1, 1949—CHAPTER 25359, ACTS 1949

QUESTION: Under the beverage laws of Florida and particularly Section 561.27, Florida Statutes, 1941, as amended by Section (11), Chapter 25359, Laws of Florida, Acts of 1949, does the beverage director have the power to approve applications for renewal of 1948-49 liquor licenses granted under subsections (3) through (8) and (11) of Section 561.34, Florida Statutes, 1941, after October 1, 1949?

To: *Honorable Lewis M. Schott, Director, State Beverage Department:*

.....

I am therefore of the opinion that the provisions relating to re-

newal of licenses are merely directory and not mandatory. . . . I am also of the opinion that it is within the authority of the state beverage director, upon reasonable cause shown, to permit a duly licensed licensee whose license has not been impaired to renew his license after October first of the taxing year.

November 7, 1949.—049-538.

Opinion No. 049-485 Rescinded and Withdrawn

Opinion No. 049-538 Written In Lieu of

**LIQUORS AND BEVERAGES—DISTRIBUTOR—GIFT OR
DISCOUNTS TO BEER VENDOR—EXCESS OF TRADE
DISCOUNTS VIOLATION §561.42**

QUESTIONS: 1. Is it a gift or a discount not in the usual course of business, as prohibited by Section 561.42, Florida Statutes, as amended by Chapters 25260 and 25340, Laws of 1949, for a beer distributor to sell a certain amount of beer to a vendor and furnish him with an additional amount as an inducement to buy that quantity?

2. Is it a discount not in the usual course of business, prohibited by Section 561.42, Florida Statutes, as amended by Chapter 25340, Laws of 1949, for a beer distributor to give a vendor a cash discount ranging from 10 to 22½ per cent when selling a certain quantity of beer to that vendor?

To: Honorable Lewis M. Schott, Director, State Beverage Department:
.....

Whether or not the practice as indicated in your first question is a gift as a matter of law is immaterial, because I am of the opinion that it is assisting a vendor by means of giving a rebate within the spirit, intent and meaning of Section 561.42, F. S., and therefore unlawful.

..... I cannot hold as a matter of law that any particular discount percentage in the usual course of business is unlawful due to the fact that our statute does not place a limitation on such discounts.

..... the director requires the various manufacturers, wholesalers and distributors to make public their prices and discounts for the purpose of a proper regulation of the beverage industry, if by such public report the discounts shown by any manufacturer, wholesaler or distributor are in excess of the normal and regular trade discounts given in the usual course of business within the beverage industry itself, and such excessive discounts tend to disrupt the orderly distribution of such alcoholic beverages, then and in that event I am of the opinion that such practices would be in violation of the intent, purpose and meaning of Section 561.42, Florida Statutes, as amended.

November 9, 1949.—049-541.

**LIQUORS AND BEVERAGES—TRANSFER OF LIQUOR LICENSES—
WINTER GARDEN, CITY OF—WITHOUT AUTHORITY TO
PROHIBIT**

QUESTION: Can the City of Winter Garden legally prohibit or

refuse the transfer of a liquor license from one individual to another, and from one location to another in the city; in the absence of an applicable zoning ordinance?

To: Senator J. B. Rodgers, Jr., City Attorney, Winter Garden, Florida:

.....

Since the moving of a liquor license from one location to another is governed by Section 561.33; the city of Winter Garden is without authority to prohibit any licensee from moving to a new location in the city unless the new location is within an area that is zoned against the sale of liquor pursuant to Section 561.44 (1), as amended, laws 1949, as cited above.

June 6, 1950.—050-272.

MUNICIPALITIES—WET COUNTIES—LIQUOR LICENSES—
REQUIREMENTS—CHAPTER 561, FLORIDA STATUTES
APPLICABLE

QUESTION: In a county where the sale of liquor is legal, must a municipality located within that county issue a license for the sale of liquor to a person who satisfies both the state and municipal requirements as to the issuance of liquor licenses?

To: Honorable M. R. Blankenship, Chairman, Town Council, Longwood, Florida:

.....

It is my opinion that where an applicant for a liquor license satisfies both the state and municipal requirements, thus showing a clear legal right to the license, the municipality is without authority to refuse to issue such license and your question is therefore answered in the affirmative.

August 3, 1950.—050-373.

CITY AND TOWN ZONING ORDINANCES—CHURCHES—SALVA-
TION ARMY PREMISES—§561.44 FLORIDA STATUTES

QUESTION: Are the premises of the Salvation Army an established church under a city ordinance, where the Salvation Army is the sole occupant of a building, has a regular church membership of 80 members, holds regular services on said premises three times a week, and said premises are used principally for church worship and Bible study?

To: Honorable Lewis M. Schott, Director, State Beverage Department:

.....

..... the city of Sarasota, Florida, has passed an ordinance under the authority of section 561.44, supra, prohibiting liquor vending places from operating or conducting their business less than 500 feet from any established church or school and that such place of business within the corporate limits of Sarasota is now requesting to be licensed, said place of business being 317 feet from the Salvation Army premises.

.....

..... it is my opinion that the premises of the Salvation Army described in your request for opinion would constitute an established church within the provisions of Section 561.44, supra.

August 3, 1950.—050-376.

**AUTHORITY OF BEVERAGE AGENTS—RAIDS—SEARCHES—
EVIDENCE—LOTTERIES—COMMON LAW RIGHT OF CITIZENS
TO ARREST—CHAPTERS 561 AND 562, FLORIDA STATUTES**

QUESTION: 1. "Can beverage agents with advance knowledge of gambling activities being conducted in a portion of a building licensed to sell liquor, stage a raid directed at gambling, without first having secured a search warrant under statutory authority given to enforce beverage laws?"

2. "Assuming the licensee waives the right of search—do other occupants of the same building, not in the beverage business but in the gambling business, waive their rights provided them under Sections 12 and 22 of the Declaration of Rights, because they occupy a part of the premises not used by the liquor licensee, but exclusively used for gambling operations?"

3. "May beverage agents, knowing in advance of gambling activities, rely upon waivers given them in Chapter 561.07 and 562.41 to inspect for beverage violations, and go in, stage a gambling raid, without the necessity of procuring a search warrant where the gambling is in a separate portion of the same building?"

4. "Do rights extended agents under sections 561.07 and 562.41, to search, give them the right to make (a) a forcible entry to outside doors of room where bolita checking is said to have been conducted, (b) break doors to inside rooms?"

5. "Do the facts (Please obtain from the Beverage Department) which they will testify they saw going on in a room, through an open door, constitute a crime of gambling, as lottery, especially to get by the D'Allesandra case, showing an interest "in a lottery, scheme or device not yet placed?"

6. "Does the common law right of a citizen to arrest for a misdemeanor committed in one's presence, carry over to statutory offenses, not known at common law?"

7. "Assuming that there will be the usual conflict in testimony—with beverage agents testifying they saw gambling through an open door and the gamblers testifying beverage agents broke in an outside door which was guarded, can the Judge submit the case to the jury as a mixed question of law and fact, charging the jury as to the law if they believe either set of witnesses?"

To: *Honorable Wayne E. Ripley, County Solicitor, Duval County, Jacksonville, Florida:*

.....

Therefore, in my opinion, your first question is properly answered in the affirmative.

AS TO QUESTION TWO:

The right to search without a search warrant, conferred by Sections 562.03 and 561.07, extends only to the licensed premises.

In my opinion, the licensed premises include not only the rooms where liquors are stored or sold by the licensee, but also all other

rooms in the building which are so closely connected therewith as to admit of free passage from the drink parlor to the other rooms, provided that the licensee has some dominion or control over, or the right to use, such other rooms. See *Walsh et al. v. State* (Wis.), 192 N. W. 1004; *Wibner v. State* (Wis.), 195 N. W. 936; *Vairda v. State* (Wis.), 195 N. W. 937; *Bombinski v. State* (Wis.), 197 N. W. 715; *People v. Miller* (N.Y.), 79 N. Y. S. 1122; *Dowman v. State* (Ala.), 74 Ala. 242. Even where the licensee has leased another room in the building to another person, the room so leased is still a part of the licensed premises where the licensee has sufficient control and dominion over said room to enable him to use it. (*Vairda v. State*, supra).

If the gambling room was a part of the licensed premises within the above outlined legal principles, then I think that the gambling room proprietor is without standing to assert that the Beverage supervisors had no right to search said gambling room under their statutory authority to search licensed premises.

.....

AS TO QUESTION THREE:

In my opinion, the Beverage Department supervisors have the right under Sections 562.03 and 561.07 to search a separate part of the building, used for gambling purposes, without a search warrant, where such separate part of the building is a part of the licensed premises within the legal principles outlined above.

Section 562.41 is not as broad as Sections 562.03 and 561.07, but I do not think that Section 562.41 limits the powers conferred by Sections 562.03 and 561.07.

AS TO QUESTION FOUR:

In my opinion, when Beverage supervisors search licensed premises under the authority conferred by Sections 562.03, 561.07 and/or 562.41, they have the right to break open either outside or inside doors to a gambling room constituting a part of the licensed premises where they are refused admittance to such room after notice of their authority and purpose.

AS TO QUESTION FIVE:

.....

These facts being true, I am of the opinion that what the supervisors saw through the open door, viewed, I think properly, in the light of the information which they previously had, gave them the right to conclude that the lottery statute was then and there being violated in said ballroom. These matters gave the supervisors the right to conclude that the tickets were in a lottery not yet played.

Moreover, although the *D'Allesandro* case, 153 So. 95, requires that in order to be guilty of *possessing a lottery ticket* contrary to the lottery statute, the ticket must represent an interest in a lottery yet to be played, neither that case nor any of the similar cases decided by the Supreme Court of Florida lays down any requirement that the lottery be not yet played in order for a person to "conduct" a lottery, or to "aid and assist in the . . . conducting" of a lottery, or "to be interested in a lottery," or "to be connected in any way with a lottery." In my opinion, a lottery is still being conducted so long as any part of the

conduct there of is unfinished, such as, for example, the gathering up of the tickets, the ascertainment of the winners, and the awarding of the prizes. And I think that the above mentioned circumstances gave the Beverage supervisors the right to conclude that an uncompleted lottery was being conducted.

I think that the facts which were visible to the supervisors, plus the information they already had, as aforesaid, were sufficient to justify an arrest by the supervisors, not as officers but as private citizens, of those persons who were then and there doing acts in said ballroom toward the conduct of a lottery. In *Poole v. State*, 177 So. 195, the Florida Supreme Court sustained an arrest by private individuals of a cow thief when the arresting individuals did not see the cows taken and did not know, but had good reason to believe, that the thief had stolen the cows and had them in his truck when they stopped the truck by shooting a tire and then found the cow carcasses in it. So, I think that the Beverage supervisors had the right to consider not only what they saw at the moment but also the information theretofore obtained by them.

And, of course, any evidence of lottery operations seized by the supervisors in the gambling room as an incident to a lawful arrest made by them as private individuals is to be taken into consideration because it corroborates the fact that what the supervisors saw through the open door was a crime.

AS TO QUESTION SIX:

It is well settled that a private individual has the common law right to arrest (1) a person who commits a felony in his presence, and (2) a person whom he has reasonable cause to suspect of having committed a felony which has actually been committed by someone, but was not committed in the arresting individual's presence, and (3) a person who, in the presence of the arresting individual, commits an affray or breach of the peace constituting a misdemeanor (4 Am. Jur. 24.26, "Arrest," Sections 35-38; 6 C.J.S. 605-608, "Arrest," Section 8. Also, see *Poole v. State*, 117 So. 195, decided by the Florida Supreme Court; and *Dorsey v. United States*, 174 F. 2d 899; decided by the U. S. Court of Appeals for the Fifth Circuit, both dealing with the common law right of a private individual to make an arrest in Florida).

I find no requirement of law that the offense for which a private individual makes an arrest must be a common law offense, as distinguished from a statutory offense, and in my opinion a private individual has the same right to arrest for a statutory offense unknown to the common law that he has to arrest for a common law offense. In *Dorsey v. United States*, supra, the Court upheld the right of a private individual to arrest for conspiracy to commit an offense wholly unknown to the common law, and I do not think that the right to arrest is at all governed by whether the offense is a statutory offense or a common law offense.

Your question is limited to the right of a private individual to arrest for misdemeanors, but I point out that a felony was involved in the arrests made at the Havana Nite Club by the Beverage supervisors as private individuals, that is to say, the felony of violating the lottery statute.

AS TO QUESTION SEVEN:

.....

However, I think that it is the judge's duty to decide all questions of fact which must be decided in determining whether the arrests made by the Beverage supervisors were lawful and whether the evidence seized by them was lawfully seized, and I think that it is the Jury's province to determine, from the evidence admitted by the judge, whether the defendants are guilty as charged.

August 7, 1950.—050-384.

COUNTY ZONING—DISTANCES FROM CHURCHES AND SCHOOLS
—MUNICIPAL ORDINANCES—§561.441, FLORIDA STATUTES—
CHAPTER 25999 SPECIAL ACTS 1949

QUESTION: Is the authority of the county commissioners, under section 1 of Chapter 25184, Acts of 1949, now section 561.441, Florida Statutes, in determining the distance of sites for liquor sales confined alone to sections outside municipalities in said county that have been zoned for business purposes, or does this authority extend to all of the territory in said county outside of municipalities that have zoning and planning boards?

To: *Hon. J. Ben Fuqua, County Attorney, Manatee County, Bradenton, Florida:*

.....

It is therefore my opinion that the following conditions must appear: (1) the county must be "wet," (2) a zoning board has been established, (3) the zoning board has zoned an area for business purposes; then, if the area in question lies outside the limits of incorporated cities and towns and *has been zoned* for business purposes under the provisions of Chapter 25999, supra, the board of county commissioners can determine the distance from churches and schools within which intoxicating liquor may legally be sold; provided they cannot make such distance less than that allowed by city ordinance of Bradenton nor more than 2,500 feet, but this authority to determine distances from churches and schools does not extend to areas in the county outside of the limits of incorporated cities and towns that have *not* been zoned for business purposes.

August 22, 1950.—050-409.

MUNICIPALITIES—ZONING AREA—CLUB LICENSEE A VENDOR—
§561.34, FLORIDA STATUTES

QUESTION: Where an incorporated city by valid ordinance has established a zoning area wherein a vendor licensed under Section 561.34 is prohibited from conducting a place of business under the beverage law, is an applicant for a club license within said prohibited area a vendor within the meaning of said statute and thereby prohibited from being issued a club license and operating thereunder?

To: *Honorable Lewis M. Schott, Director, State Beverage Department:*

.....

I have considered at length the opinion of the able Assistant City Attorney of Tampa, but in the light of the authorities cited, I must disagree with him and answer your question in the affirmative.

September 27, 1950—050-466.

**MUNICIPALITIES—CONFISCATION—AUTOMOBILES—VEHICLES—
FORFEITURE—TRANSPORTING ILLEGAL LIQUOR—NO
AUTHORITY**

QUESTIONS: 1. Where a city has a city ordinance making it unlawful for any person, persons, corporations, etc., to sell, barter, exchange, manufacture, possess or transport in said city any illegal liquor or whiskey commonly called "moonshine whiskey" or "rum," and providing a penalty for same, may such city confiscate by means of forfeiture automobiles or vehicles so transporting said illegal liquors?

2. If the answer to the first question is in the negative, then must the city or some responsible city official upon seizing an automobile or vehicle or apprehending the driver thereof for transporting illegal liquors within the confines of the city limits turn over said automobiles or vehicles so seized to the sheriff or state beverage department for forfeiture?

To: *Honorable C. C. Caulk, Municipal Judge, Madison, Florida:*

.....
..... the answer to your first question is in the negative.

As to the second question, it is common knowledge that police officers are often called upon and it is their duty to apprehend persons for violating state laws and due to the fact that transporting illegal intoxicating liquor, sometimes known as "moonshine whiskey" or "rum," is both a violation of the city ordinance and the state law, the city or any responsible city police officer would be justified in surrendering a vehicle so seized to the sheriff of the respective county, who in turn could turn it over to the state beverage director for proper forfeiture proceedings.

October 11, 1950—050-485.

**LIQUOR LICENSEE—SALES—DRINKS—PACKAGES—SEPARATE
LOCATIONS—REQUIREMENTS—SECTION 561.34(3) (7)
(8), FLORIDA STATUTES**

QUESTION: "May a liquor licensee under Chapters 561 and 562, FSA, who has a bar license for both package and on-premises sales be allowed to separate the places for the sale of liquor by selling package goods in one of his locations and by the drink in another location under the same license? The licensee owns both locations and they are within a block of each other. Will his present license which conforms to all laws and regulations at this time permit him to sell by the drink in one location and by the package in another location?"

To: *Honorable Harold S. Smith, County Attorney, Collier County, Everglades, Florida:*

.....
Therefore, the answer to your question is in the negative.

December 14, 1950—050-560.

**INTOXICATING LIQUORS—LICENSED VENDORS—DELIVERIES—
CONSUMPTION ON PREMISES—REGULATION OF—CURB
SERVICE PROHIBITED**

STATEMENT and QUESTION: Where two places of business are located in the same building, separated by a permanent partition con-

taining no door or opening, and each place of business is accessible only from an outside door, one of which places of business is a retail liquor establishment licensed under Section 561.34, Florida Statutes, and authorized to sell both by the drink and in the package and the other place of business is a restaurant, are the following activities in violation of the beverage laws:

(1) The waitress, or other employee of the restaurant proceeds out of the door of the same and into the bar and package store, and obtains a bottle of the brand and kind desired by the customer, and returns to the restaurant and delivers it to the customer, and collects the money therefor;

(2) The same as above in paragraph (1), except that the customer of the restaurant desiring the beverage gives the waitress his own money in advance and requests her to purchase the bottle for him at the bar;

(3) The same as paragraph (1) above, except that a drink is the subject of the transaction rather than a bottle;

(4) The same as in paragraph (2) above, except that a drink is the subject of the transaction rather than a bottle;

(5) The restaurant transmits to the bar and package house, by telephone or other means of communication, the customer's order for a bottle of alcoholic beverage, and an employee of the bar and package house delivers the same to the customer in the restaurant, and collects the money therefor;

(6) The same as in paragraph (5) above, except that a drink is involved;

(7) The customer of the restaurant proceeds himself to the bar and package house, and himself purchases a bottle and returns with it to the restaurant and proceeds to open and consume the same there, or a portion thereof;

(8) The same as in paragraph (7) above, except that a drink is involved?

To: Honorable Rex Sweat, Sheriff, Duval County, Jacksonville:

..... Your questions properly are answered in their numbered order as follows:

(1) The order is given for the liquor in the restaurant to an employee of the restaurant, the liquor is delivered in the restaurant and the sale price of the liquor is collected at the time of delivery. Therefore the sale was made in the restaurant at the time of delivery of the liquor. This would be a sale of liquor without a license.

(2) In your question number 2 the buyer makes the waitress of the restaurant his agent, gives her the money and the sale is made in the retail liquor establishment. I see no violation here unless there might be a conspiracy to violate the liquor laws.

(3) and (4) Section 569.01, *supra*, makes it unlawful for any person to serve or sell intoxicating liquor, by the drink, except within the building which is the address of the person holding a license for

the sale of such intoxicating liquor and prohibits curb or drive-in service of such liquor. Building here means that portion or area covered by the licensee's license. This prevents the licensee, his employees or agents from serving or selling intoxicating liquors by the drink outside his licensed place of business but I do not believe he could be held to be an insurer that no liquor would be bought by the drink inside the place of business and then carried outside by someone over whom he has no control; however, if the licensee has reasonable grounds to believe that such liquor purchased by the drink will be carried from the licensed premises, then he should refuse such sale.

(5) Section 561.57, *supra*, permits licensed vendors to make deliveries away from their licensed places of business and provides that telephone orders received at the vendor's licensed place of business shall be construed as a sale actually made at the vendor's licensed place of business, but section 569.01, *supra*, limits this delivery to intoxicating liquors in sealed, stamped containers, thus eliminating liquor deliveries by the drink. Therefore, there would seem to be no violation of the law under the facts contained in your question No. 5.

(6) Your question 6 involves a sale of intoxicating liquor by the drink and is not permitted to be served or sold except within building of licensee.

(7) There would be no violation of the beverage laws under the facts contained in your question 7.

(8) This question has been answered under numbers (3) and (4) *supra*.

BEVERAGE LAW; ENFORCEMENT

March 11, 1949—049-96.

MINORS—EMPLOYMENT—LICENSED ESTABLISHMENTS—VENDORS—PROHIBITION—§§450.23 and 562.13, F. S. '41 APPLICABLE

QUESTION: Do the provisions of Section 450.23, Florida Statutes, 1941, or the provisions of Section 562.13, Florida Statutes, 1941, govern the employment of persons under twenty-one years of age in establishments licensed under Section 561.34, Florida Statutes, 1941?

To: Honorable Lewis M. Schott, Director, State Beverage Department, Tallahassee, Florida:

.....

In the light of the above observations, it seems possible that both of the sections mentioned in the above question may have a field of operations; that Section 450.23 regulates the question as to vendors, licensed under subsections (1) and (2) of Section 561.34; that Sections 450.23 and 562.13 are applicable to all minors whose disabilities of nonage have not been removed; and that Section 450.23 applies to minors whose disabilities of nonage have been removed. Under this construction, minors whose disabilities of nonage have been removed may not be employed in any place where intoxicating liquors are sold.

April 20, 1949—049-165.

BEER—SUNDAY SALE LEGAL—COUNTY COMMISSIONERS ACTION REQUIRED TO MAKE SALES ILLEGAL

QUESTION: Is it a violation of the beverage law of Florida to sell 3.2 beer on Sunday if the Board of County Commissioners has taken no action to prevent its sale on Sunday?

To: *Honorable Frank M. Williams, Sheriff, Polk County, Bartow, Florida:*

I am of the opinion that your question should be answered in the negative, as to sales after seven o'clock Sunday morning. . . .

April 26, 1949—049-178.

COUNTY COMMISSIONERS—CLAY COUNTY—AUTHORITY TO ZONE CERTAIN DISTRICTS TO PROHIBIT SUNDAY BEER SALES

QUESTION: May the county commissioners of Clay County zone certain districts of the county to prohibit Sunday sales of beer and not zone the other districts in order to allow Sunday sale?

To: *Honorable R. L. Tilley, Clerk of the Circuit Court, Clay County, Green Cove Springs, Florida:*

I am of the opinion that the county commissioners may regulate certain districts of the county to prohibit Sunday Beer Sales, and not regulate the other districts, so long as such regulation has a reasonable basis within the police power. . . .

May 4, 1949—049-191.

CITIES AND TOWNS—POWER TO PASS ZONING ORDINANCES—LOCATION OF VENDOR—BEVERAGE DIRECTOR, AUTHORITY REVOKE LICENSES

QUESTION: May the town council close a saloon within the town limits?

To: *Mr. E. H. S. Beall, Clerk, Town of Altha:*

Incorporated cities and towns are given the power under Florida Statutes, 561.34 (1) 1947 Cumulative Supplement, to pass zoning ordinances restricting the location wherein a vendor under 561.34 may be permitted to conduct his place of business. This is an exercise of the police power of the municipality and must be reasonably used in order to protect the health, safety, morals, or general welfare of the people.

If you consider this bar to be disorderly or a nuisance the Director of the Beverage Department has authority to suspend or revoke its license, after hearing the evidence presented and it is sufficient.

.

May 4, 1949—049-194.

**DRY COUNTIES—SALE OF WHISKEY—UNLAWFUL POSSESSION
ON PREMISES OF BEER VENDOR**

QUESTION: How much tax-paid whiskey may be kept on the premises of a place of business licensed to sell beer only in a dry county?

To: Mr. L. S. Griffin, Chief of Police, Greenville, Florida:

..... So under Section 562.02 F.S. no intoxicating beverages would be lawful on the licensed premises of a beer vendor.

..... Under Section 568.03 F.S. it would be unlawful in your town to have *any* whiskey with intent to sell it.

July 29, 1949—049-345.

**COUNTY COMMISSIONERS—AUTHORITY BY RESOLUTION TO
REGULATE SUNDAY SALES ALCOHOLIC BEVERAGES—
MUNICIPALITIES EXCLUDED—§562.14 (4),
FLORIDA STATUTES**

QUESTION: Can a board of county commissioners by resolution permit the sale of *intoxicating* liquors on Sunday?

To: Honorable Richard H. Merritt, County Attorney, Escambia County, Pensacola, Florida:

..... Under Section 562.14 (2) as amended the sale of intoxicating liquors (over 3.2% alcohol by weight) on Sunday is prohibited, but section 562.14 (4) as amended gives the board of county commissioners the authority to independently regulate the hours of sale of alcoholic beverages exclusive of municipalities. So in order for the county commissioners to permit Sunday sales of intoxicating liquors they must act under section 562.14 (4).

We are presuming the constitutionality of Section 562.14, Florida Statutes, as it has never been the policy of the Attorney General's office to adjudicate constitutional questions in its opinions.

June 12, 1950—050-288—049-178.

**COUNTY COMMISSIONERS—ALCOHOLIC BEVERAGES—HOURS
OF SALE—POWER TO REGULATE—TERRITORIAL
JURISDICTION**

QUESTION: May a board of county commissioners regulate the hours of sale of alcoholic beverages within one portion of its territorial jurisdiction different from the hours of sale of alcoholic beverages in another portion of its territorial jurisdiction?

To: Honorable S. D. Saunders, State Representative, Clay County, Middleburg, Florida:

..... In answer to your specific question, the state beverage director

in a letter to Honorable D. E. Pangborn, County Commissioner of Clay county, dated April 9, 1949, stated:

" . . . The question to be answered is whether or not the County Commissioners under said subsection 4 of said statute, have the power to regulate the hours of sale of alcoholic beverages within one portion of its territorial jurisdiction and regulate different hours of sale of alcoholic beverages in another portion of its territorial jurisdiction. I feel that this definitely would be a question of judicial decision according to the facts of each individual case. If the Court believes from these facts that the County Commissioner's action, by providing for different hours for different areas, was substantiated by some reasonable relation to the health, safety and morals of the county, then in that event I feel that such a resolution could be upheld. However, if there is no such constitutional basis for the ordinance lacking in uniform application to the entire county, I am of the opinion that such a resolution would fall."

The above is a departmental construction of the statute and should be given considerable weight and is in agreement with my opinion No. 049-178 dated April 26, 1949, issued to Honorable R. L. Tilley, Clerk of the Circuit Court, Clay County, Green Cove Springs, Florida, a copy of which is attached hereto. Therefore, your question is answered in the affirmative.

October 16, 1950—050-492.

ALCOHOLIC BEVERAGES—MOONSHINE WHISKEY—TAX NOT PAID—SECTION 562.32, FLORIDA STATUTES APPLICABLE

QUESTION: "Is a valid offense charged against a person under Section 562.32, Florida Statutes where the beverage concerned is moonshine whiskey and the charge is worded in the subjunctive as to the tax, i. e., 'would be imposed if such beverage were manufactured in or brought into this state in accordance with the regulatory provisions thereof' "?

To: Honorable Lewis M. Schott, Director, State Beverage Department:

Therefore, in my opinion your question is properly answered in the affirmative.

November 14, 1950—050-526.

CONSTABLES—SEARCH WITHOUT WARRANT—NO AUTHORITY—§210.15 (6), §562.41 (1), FLORIDA STATUTES APPLICABLE

QUESTION: Is a constable authorized to search without a warrant, the places of business of licensees pursuant to provisions of Section 210.15(6) or Section 562.41(1), Florida Statutes.

To: Honorable Glen Darty, Justice of the Peace, Lake Wales, Polk County, Florida:

The question under consideration was thoroughly discussed in opinion # 046-449, dated October 15, 1946, Attorney General's Biennial Report 1945-1946, copy attached, in which I concur.

your question is answered in the negative.

LOCAL OPTION ELECTIONS

March 5, 1949—049-84.

DESOTO COUNTY—VOTERS—REGISTRATION—GENERAL LAWS
APPLICABLE

QUESTION: May the registration books of DeSoto County be opened for the registration of electors to vote in a local election as contemplated by Chapter 567, Florida Statutes, 1941, other than those periods when electors may register and thereby qualify to vote in general elections?

To: *Honorable John H. Treadwell, Jr., Attorney, Board of County Commissioners, DeSoto County, Arcadia, Florida:*

Under the general registration laws of Florida, the registration of electors qualified to participate in general elections is confined to particular periods provided in the statutes; hence, the registration of electors who desire to participate in a local option election at any time other than during those periods when such books are so authorized to be open, is not permitted by law.

April 21, 1949—049-170.

ELECTIONS—WET-DRY—FORM OF BALLOT—§567.06, F. S.
CONSTITUTIONAL

QUESTIONS: 1. If the majority of those voting in local option elections vote in favor of "for selling intoxicating liquors, wines, or beer" then will only those votes be counted in order to determine if liquor is to be sold by package and drink, or for sale by package only?

2. Is the form of ballot as provided for in Section 567.06, Florida Statutes 1947, constitutional under Section 1, Article 19 of the Florida Constitution?

To: *Honorable John Treadwell, Jr., Attorney, Board of County Commissioners, DeSoto County, Arcadia, Florida:*

In answer to your first question. . . . A person may vote "dry" on question number 1 on the ballot, and still vote on question 2 in order to determine how liquor is to be sold if the county goes "wet"

. . . . A person who votes "dry" on question 1 must also have his vote counted on question 2 if the majority of the voters vote for a "wet" county.

In answer to question number two I have not been able to find a Florida case that declares this ballot, as provided under Section 567.06, Florida Statutes 1947, unconstitutional. The presumption is that a statute is constitutional until declared unconstitutional by the Supreme Court of Florida.

December 30, 1949—049-618.

See: Opinion 049-297

PETITION—REQUIRED NUMBER OF NAMES—EXPENSE OF ELEC-
TION—SUPERVISOR FEES—§567.01, F.S.—CON.
ART. XIX, SEC. 1

QUESTIONS: 1. How many registered voters of a county must sign the written application to the board of county commissioners for

election to decide whether the sale of intoxicating liquors, wines or beer shall be prohibited therein?

2. In view of the requirements of Section 5, Chapter 24232, Laws of Florida, Acts of 1947, relating to striking of names of registrants from the registration records of Orange County, can there be a local option election in that county in February, 1950?

3. Who stands the expense of a local option election?

4. In addition to the salary provided by law, is the supervisor of registration of Orange County entitled to fees chargeable for the furnishing of lists of registrants to applicants therefor?

To: Mrs. Pearl S. Yancey, Orange County Supervisor of Registration:

The above questions are answered in their numbered order as follows:

(1) An application to the board of county commissioners for a local option election as contemplated by Article XIX, Section 1, Florida Constitution, and Section 567.01, Florida Statutes, must be signed by one-fourth of the registered voters of the county.

(2) It is not apparent that the provisions of Section 5 constitute an obstacle to the matter of the registered voters of said county, should an application for a local option election be filed with the board within the near future.

(3) The county defrays the expenses of a local option election.

(4) this question is answered in the negative.

The difference between the provisions of the Orange County act above with respect to this matter of compensation and the Polk County act, dealt with in our opinion No. 049-297, is to be noted.

June 26, 1950—050-317.

LOCAL OPTION ELECTION—SIGNATURES—IDENTIFYING VOTERS—567.01 (1), FLORIDA STATUTES

QUESTION: When a written application for a local option election in a certain county is presented to the board of county commissioners of said county, as contemplated by Section 567.01 (1), Florida Statutes, 1949, as amended, if said board determines that certain of those who signed such application by initials and surname are the same persons registered by christian and surname on the registration books, should such signatures be accorded consideration in ascertaining if one-fourth the qualified electors of the county have signed the application?

To: Honorable D. H. Sloan, Jr., Clerk Circuit Court, Polk County, Bartow, Florida:

On June 24, 1948, my immediate predecessor in office issued opinion No. 048-210 (Biennial Report of Attorney General, 1947-1948, page 504), directly answering a question identical with the question above set forth. I agree with the conclusions set forth in such former opinion and adopt such conclusions as the proper answer to said question. A copy of former opinion 048-210 is hereto attached.

October 12, 1950—050-486—050-317—050-418.

**SUPERVISORS OF REGISTRATION—LOCAL OPTION ELECTION—
PETITION (APPLICATION)—DUTIES—SUMTER COUNTY**

QUESTIONS: At a recent regular meeting of the Board of County Commissioners of Sumter County, a petition (application) was presented to it asking for the holding of a local option election as contemplated by Chapter 567, particularly Section 567.01, Florida Statutes, 1949. Representatives of interests for and against the question proposed to be presented at such local option election were present before the Board at the time such petition was filed. The following questions now confront the supervisor of registration with respect to said petition and his duties in relation thereto:

(1) Is the supervisor of registration authorized to give representatives of either of these interests a list of those names appearing on said petition; or is it permissible for the supervisor to allow such representatives to copy the names from the petition?

(2) Is it proper for the supervisor of registration, at the request and direction of the Board of County Commissioners, to check the names on the petition with the names on the registration books of the county to ascertain if the petition is signed by one-fourth of the registered voters of the county?

(3) In comparing signatures on said petition and the names of registered electors of said county, if said Board determines that certain of those who signed such petition by initials and surname are the same persons registered by christian and surname on the registration books, should such signatures be accorded consideration in ascertaining if one-fourth the qualified electors of the county have signed the application?

(4) If the Board shall determine that the petition so presented meets the requirements of Section 567.01(1), properly may the Board fix the date the election is to be held during the first fifteen days of December, 1950?

(5) If such local option election is called to be held on some date during the first fifteen days of December, 1950, when should the registration books be closed for the purpose of registering so as to qualify a person, otherwise an elector, to vote at such election?

To: Honorable S. N. Graham, Supervisor of Registration, Sumter County, Bushnell, Florida:

(1) The petition (application) filed with the Board of County Commissioners contemplated by this question is a part of the public records of Sumter County. . . .

. . . . There appears to be no law which would prohibit the supervisor of registration furnishing to anyone who might make application therefor a list of the signers of the petition. . . .

. . . . There appears to be no law which would prohibit any person copying these names off the petition. . . .

(2) It is quite proper that the supervisor of registration, at the request of the Board of County Commissioners, should check the

names on the petition against the registration books, so that the county commissioners may determine if one-fourth of the registered voters of the county, at the time the petition was filed with them, signed the same.

(3) This question was dealt with in opinion of this office 050-317. It will be noted that such opinion adopted an opinion of this office of June 24, 1948, No. 048-210. Copies of both of these former opinions are hereto attached, and the matters set forth therein furnish a complete answer to this question.

(4) Section 1, Chapter 25392, Laws of 1949 (Section 99.60, Florida Statutes, 1949) provides in effect that from and after October 1, 1949, no special state, county or district election, including a bond election, shall be held within thirty days prior to or within thirty days subsequent to any regular primary or general election; provided, that there is excepted from the foregoing provisions of the Act any election held on the day preceding or following any regular primary or general election. There are further exceptions in the Act not applicable to Sumter County. Section 567.04, in effect, provides that all elections ordered under Chapter 567 shall be held within sixty days from the time of presenting the petition (application) as described in Section 567.01, but that if any such election should thereby take place within sixty days of any state or national election it shall be held within sixty days after any such state or national election. Thus, should the Board of County Commissioners ascertain that a local option election should be called in pursuance of the petition and Section 567.01, it appears that such election at this time properly cannot be held in Sumter County until a date more than thirty days subsequent to the date of the 1950 general election, but within sixty days of such general election. In fixing the date of the election the board should bear in mind the notice required to be given by Section 567.01.

(5) it appears that the answer to the first question set forth in such former opinion 050-418, is applicable in Sumter County and furnishes the answer to this question. It is, of course, recognized that such books shall be closed during the period required by Section 98.22, Florida Statutes, 1949, in relation to the 1950 general election.

CHAPTER XXXI

AGRICULTURE, HORTICULTURE AND ANIMAL INDUSTRY

AGRICULTURAL FERTILIZERS

January 28, 1950:—050-42.

WAIVER OF DEFICIENCY—COMMERCIAL FERTILIZER— PENALTIES—CHAPTER 576, FLORIDA STATUTES 1941

QUESTIONS: 1. In the interpretation of Chapter 576, Florida Statutes 1941, and particularly Section 576.08 and 576.084, inclusive, may a purchaser of fertilizer waive the penalties imposed upon a dealer or manufacturer, in favor of a purchaser, for the sale of fertilizer in which a deficiency of ingredients is discovered upon an analysis made by a state chemist or otherwise, and settle the statutory liability of the dealer or manufacturer for an amount less than that fixed by the statute, without notice to, or the consent of the Commissioner of Agriculture?

2. If the first question is answered affirmatively, would the transaction recited relieve the dealer or manufacturer of the criminal penalties imposed by Section 576.10 of Chapter 576, Florida Statutes 1941?

3. To what extent is the Commissioner of Agriculture authorized by rule and regulation to require a dealer or manufacturer to report to him the details of all transactions had with a purchaser comprehended within the circumstances recited in the first question?

To: *Hon. Nathan Mayo, Commissioner of Agriculture:*

.....
..... The answer to the first question is accordingly in the affirmative.

.....
..... The prior statute contained an exemption from the imposition of the criminal penalty of persons subject to the imposition of the civil penalty. The statute now in effect withdraws that exemption, and subjects a manufacturer or dealer who shall misrepresent the proportion of any ingredient in commercial fertilizer to the criminal penalty prescribed by the 1949 statute, regardless of whether he is liable for the civil penalty imposed in favor of the buyer. In addition to his liability to the buyer he is subject to prosecution and imposition of the criminal penalty imposed by Section 376.10, paragraph (1).

In answer to the third question presented, Section 576.09 of Chapter 576 provides, among other things:

"This chapter shall be administered and its provisions and all rules and regulations adopted and promulgated hereunder shall be enforced by the commissioner of agriculture of the State of Florida.

"The commissioner of agriculture is hereby authorized to make, adopt and promulgate all rules and regulations under the classification 'administrative rules and regulations' which he shall deem necessary or helpful in the efficient administration and enforcement of this chapter."

This power is sufficiently broad to authorize the Commissioner of Agriculture by rule and regulation to require a dealer or manufacturer to report to him within a time to be fixed by the regulation the details of all transactions which may be had between a dealer or manufacturer and a purchaser in which the circumstances recited and related in the first question are present. . . .

September 6, 1950.—050-435.

COMMISSIONER OF AGRICULTURE—LABELING OF COMMERCIAL FERTILIZERS—AUTHORITY—§576.09, FLORIDA STATUTES

QUESTION: May the Commissioner of Agriculture pursuant to Section 576.09, Florida Statutes, 1949, adopt rules and regulations whereby manufacturers of commercial fertilizers offered for sale in Florida, may have printed on the bag in which the fertilizer is packed, a facsimile of the prescribed analysis tag which package shall have plainly and legibly printed the data required by Section 576.04, Florida Statutes, 1949, including a permit number showing inspection fee paid to the State and the date of the shipment of the product, in lieu of the requirement that the package have a tag attached giving the pertinent information?

To: *Honorable Nathan Mayo, Commissioner of Agriculture:*

.

Hence, the question is answered in the affirmative.

STATE LIVE STOCK SANITARY BOARD

January 18, 1949.—049-16.

CATTLE INSPECTION—REIMBURSEMENT TO OWNERS IN AREAS NOT UNDER QUARANTINE

QUESTION: A reinfestation of the cattle fever tick has occurred in Volusia County, and said county is now under quarantine because of such condition. Movement of cattle from such area to other counties has cast upon the State Live Stock Sanitary Board the responsibility of inspecting cattle so removed to see if any such cattle are infected with the fever tick. In making such inspections the owner is requested by an employee of the board to gather his cattle for inspection purposes. In the absence of a valid quarantine as to such cattle, under Section 585.27, Florida Statutes, 1941, as amended, is the board liable for the payment to the owner of the expense incident to his gathering of said cattle for inspection, to the extent provided by said section?

To: *Dr. J. V. Knapp, State Veterinarian, Tallahassee, Florida:*

.

. Your question is answered in the affirmative.

May 23, 1949.—049-236.

**BOARD OF CONTROL—DISTRIBUTION ANTI-HOG CHOLERA
SERUM WITHOUT CHARGE**

QUESTION: Is the Board of Control entitled to receive anti-hog cholera serum and hog cholera virus from the State Live Stock Sanitary Board, free of charge, when such serum and virus is used to inoculate hogs at the Florida State University farm?

To: The Board of Control:

.....
Your question is answered in the affirmative.

July 14, 1949.—049-326.

**NO APPROPRIATIONS—MARKING "FLORIDA BEEF"—DUTIES
IN ENFORCEMENT CHAPTER 25183, ACTS 1949**

QUESTION: No appropriations were made to carry out the duties imposed upon this Board by Chapter 25183, Laws of 1949, and no funds are available for this purpose in our general appropriation. Under such circumstances, what are the duties of the Live Stock Sanitary Board relative to the enforcement of the law and how should the Board attempt to carry out its duties?

To: Florida State Live Stock Sanitary Board:

.....
Failure of the Legislature to make an appropriation for the cost of enforcement will make it necessary for your Board to do as well as you can with the funds you may have. In other words, your inspectors should enforce the above law to such extent as may be possible under the circumstances. The duties of your Board under Chapter 23183 are entitled to the same attention as your other duties.

.....
August 1, 1949.—049-347.

**"CUT OF BEEF" DEFINED—MEANS WHOLE CARCASS—HALVES
—SIDES—QUARTERS—LOINS—CHAPTER 25183, ACTS 1949**

QUESTION: What is the meaning of the words "cut of beef" in Section 2 of Chapter 25183, Laws of 1949?

To: Honorable J. V. Knapp, D.V.M., Secretary, State Live Stock Sanitary Board:

.....
It is my opinion that the words "cut of beef" in Section 2 means the whole carcass or halves, sides, quarters or loins as customarily sold to wholesalers and retailers, and does not mean roasts, chops, steaks and such small portions sold by retailers to the consumer.

LEGAL FENCES AND LIVE STOCK AT LARGE

June 26, 1950.—050-303.

**SHERIFFS—COUNTY COMMISSIONERS—LIVESTOCK ROAMING
HIGHWAYS—DUTIES—RESPONSIBILITIES—ENFORCEMENT—
CHAPTER 25236, FLORIDA STATUTES**

QUESTION: What are the duties and responsibilities of the sheriff, the county commissioners, and other parties affected by the provisions

of Chapter 25236 (Sections 588.12-588.26, Florida Statutes, 1949) relating to livestock roaming on state highways?

To: Honorable S. G. Revels, Sheriff, Liberty County, Bristol, Florida.

.....
In summing up the provisions of this act with reference to the duties of those affected in the enforcement thereof the law provides that the county commissioners shall provide necessary pounds or other places to keep the cattle impounded and furnish truck transportation of the livestock including all necessary expenses of the driver and operation of the equipment.

The sheriff as the chief enforcement officer, shall perform all duties necessary to keep the highway clear of livestock by impounding, feeding, caring for, offering for sale, notifying owners, selling and turning over to the clerk of the circuit court all monies received from the sale of livestock impounded. The fees as set forth in Section 588.18 become additional revenue to the sheriff's office for the purpose of defraying the expenses of enforcement of this act.

December 21, 1950—050-576, 050-303.

COUNTIES—SHERIFFS—IMPOUNDING LIVESTOCK—TRANSPORTATION COSTS—§588.21, §588.22, FLORIDA STATUTES

QUESTIONS: 1. Where the county commissioners supply a truck for transportation of impounded livestock pursuant to the provisions of Section 588.21, is it the responsibility of said county commissioners to also supply the necessary gas, oil and other expense incidental to the operation of said truck for the required purpose?

2. Is it the duty of the county commissioners or the sheriff to pay the compensation for employment of guardmasters and guards as provided in Section 588.22 for the care of said impounded livestock?

3. May Sheriff shoot wild horses found running at large on state highway in violation of livestock law when said wild horses cannot be captured alive?

To: Honorable Marshall R. Hayes, Sheriff, Santa Rosa County, Milton, Florida:

..... the county of necessity must also furnish a driver for said truck, gasoline, oil, tires, rental or any other expense incidental to providing the required truck transportation for said impounded livestock. Reference is made to opinion No. 050-303 rendered by this office June 26, 1950, copy attached.

Answer to your second question is found in Section 588.22, which authorizes the sheriff to employ guards and poundmasters. It is the sheriff's duty to pay their compensation.

The sheriff may lawfully shoot wild horses running at large on state highways if, in fact, they cannot be captured and if they are actually a danger to the public. This is in answer to your third question.

June 26, 1950.—050-304.

SHERIFF'S FEES—LIVESTOCK—ENFORCEMENT EXPENSES—CHAPTER 25236, ACTS 1949—CHAPTER 20643, LAWS 1941—NO CONFLICT—LIBERTY COUNTY

QUESTION: How does Chapter 25236, Laws of 1949, (Sections

588.12-588.26, Florida Statutes, 1949) affect Chapter 20643, Laws of 1941, relating to collection of fees by the Sheriff of Liberty County?

To: Honorable S. G. Revels, Sheriff, Liberty County, Bristol, Florida:

.....

The Sheriff of Liberty County may collect such fees and employ additional help as necessary to impound livestock and enforce provisions of Chapter 25236, Laws of 1949.

August 10, 1950.—050-390.

ELECTIONS—LIVE STOCK—FENCING BY OWNERS— NASSAU COUNTY

QUESTIONS: 1. Under the laws of this state, other than to the extent set forth in Sections 588.13-588.26, Florida Statutes, 1949, are the owners of live stock in Nassau County required to prevent the same from running or roaming at large.

2. Under the laws of this state, is there any method whereby the electors of Nassau County can, by special election, effect or bring into force and effect a no-fence law or regulation in said county?

To: Honorable Gordon B. Ellis, County Agent, Hilliard, Nassau County, Florida:

.....

In view of the foregoing, it appears that the above questions properly are answered as follows:

(1) There appear to be no laws applicable in Nassau County requiring the owners of livestock to prevent same from roaming or straying at large, except as follows: (1) The provisions of Sections 588.13-588.26 applicable to livestock running at large or straying upon the public roads of the county. (2) The provisions above mentioned of Chapter 13125, applicable to Amelia Island. (3) The provisions of Chapter 23423, above mentioned, relating to the turning of bulls upon the open range. (4) Such regulations of the subject matter as may be applicable in charter or ordinance provisions of municipalities in the county.

(2) There appear to be no laws authorizing the holding of an election in said county to pass upon the question of invoking no-fence regulation for the county.

As stated above, a local act could be passed at any legislative session providing a valid no-fence law for Nassau County, which law might contain a provision making it effective upon the vote of a majority of the electors participating in a referendum election to decide whether it should become effective.

September 29, 1950.—050-464.

LIVESTOCK RUNNING AT LARGE IMPOUNDED—CHAPTER 588, FLORIDA STATUTES—APPLICABLE—LEVY COUNTY

QUESTION: What disposition must be made of hogs and other livestock found running at large upon the highways of this state?

To: *Honorable W. J. Crews, Constable, District #3, Levy County, Otter Creek, Florida:*

.....

Section 588.16 specifies as follows:

"It shall be the duty of the sheriff or his deputies or any other law enforcement officer of the county or state highway patrolmen, where livestock is found to be running at large or straying, to take up, confine, hold and impound any such livestock, to be disposed of as hereinafter provided."

Thus it will be seen that the legislature has thrust a duty upon certain law enforcement officers and those officers coming within that category must perform that duty. That is to say that such officers must impound such livestock found running at large or straying as above defined.

Sections 588.17 et seq. set forth the provisions for public sale and further disposition of such impounded livestock.

The provisions of Section 588.21 indicate the duty of the county commissioners

I have been unable to find any special or local laws applicable to Levy County which would affect the applicability of the aforementioned sections, therefore it is my opinion that the aforesaid provisions of Chapter 588, Florida Statutes 1949, are in full force and applicable to Levy County.

.....

October 9, 1950.—050-481.

**HOGS—ROAMING AT LARGE—FENCING LAWS—ENFORCEMENT
—CHAPTERS 14039, 15204, ACTS 1931, SECTIONS 588.01, 588.011,
FLORIDA STATUTES—FLAGLER COUNTY**

QUESTIONS: 1. What fencing statutes are applicable to Flagler county with reference to hogs?

2. Were the Special and Local Acts applicable to hogs roaming or running at large in Flagler County, Florida, repealed by the adoption of Chapter 25236, Laws of Florida, Acts of 1949?

3. What is required of landowners in Flagler county, Florida, to prevent the running or roaming at large of hogs on their said lands, if anything is required of them?

4. Is there any civil or criminal penalty against the owners of hogs who permit or suffer their said hogs to roam or run at large in Flagler County, Florida?

To: *Honorable W. H. Wells, Sheriff, Flagler County, Bunnell, Florida:*

.....

Answering the above stated questions generally, without any attempt to answer them in order and specifically, you are advised that:

1. Sections 588.12 to 588.26, Florida Statutes, are applicable to the roads and highways, within the county, maintained by the State Road Department.

2. If Chapter 15204, Laws of Florida, Acts of 1931, was duly adopted by the electors of the county, it is applicable to the entire county. Under this enactment the landowners are only required to fence against the larger animals and not against hogs and other small animals. This is in effect a No Fence Law as to small animals, if it is in effect.

3. If Chapter 14039, Laws of Florida, Acts of 1931, was duly adopted by the electors of the districts mentioned above it is applicable to those districts. Under this enactment landowners are not required to fence against any type of animals; this enactment, if adopted, created No Fence Districts wherein no livestock is permitted to roam or run at large.

4. If neither Chapter 14039 nor 15204, supra, was adopted by the electors they would not be in force and the provisions of Sections 588.01 and 588.011, Florida Statutes, would be applicable except in so far as they may be affected by the above Acts and the 1949 Act.

FLORIDA BOARD OF FORESTRY

January 12, 1949.—049-8.

FLORIDA PARK SERVICE—COURT COSTS—ATTORNEY FEES— CRIMINAL ACTS OF AGENTS

QUESTION: Is the State Comptroller authorized to issue a warrant payable from funds specifically appropriated for state park purposes, in payment of attorneys' fees and court costs accruing from the prosecution of an employee of the Florida Park Service for violation of a criminal law of the State?

To: *Honorable C. M. Gay, Comptroller, State of Florida:*

..... The question is accordingly answered in the negative.

May 4, 1949.—049-190.

MAY LAWFULLY ACQUIRE PROPERTY FOR HISTORIC PARK

QUESTION: Is the Florida Board of Forestry and Parks authorized by statute to accept conveyance of lands and property from the United States War Assets Administration, upon which to establish, maintain and preserve a historical park perpetually under conditions prescribed by the provisions of Public Law 878 enacted by the 80th Congress?

To: *Honorable Fuller Warren, Governor:*

..... The question is accordingly answered in the affirmative.

June 23, 1949.—049-272.

FLORIDA BOARD OF PARKS AND HISTORIC MEMORIALS— APPROPRIATION—EXPENDITURES—SENATE BILL 441 OF 1949 SESSION

QUESTION: Under the provisions of Section 11, Senate Bill No. 441, Session of 1949, will the Florida Board of Parks and Historic Memorials after the effective date of the act be limited in its expenditures for the administration, improvement, and maintenance of state

parks and historic memorials to moneys appropriated by the legislature for that purpose to the exclusion of moneys received from other sources, whether grants, gifts, devises, fees, rentals and charges and other sources?

To: Honorable Lewis G. Scoggin, Director, Florida Park Service:

.....
The question is accordingly answered in the negative.

FOREST PROTECTION

December 30, 1949.—049-614.

BOARD OF FORESTRY—POWERS AND DUTIES—SETTING OF FIRES—ENFORCEMENT OF LAW—§590.08-11, FLORIDA STATUTES

QUESTION: What are the duties, obligations, authority and jurisdiction of the Florida Board of Forestry, its officers, agents and employees, in connection with the enforcement of laws and statutes regulating or prohibiting the setting of forest or wild fires?

To: Florida Board of Forestry:

.....
It appears from the above observations that Chapter 590, Florida Statutes, provide a comprehensive code of statutes for protecting forests and woods from unlawful burning and that the fire wardens and their firefighting crews have jurisdiction over forest fires whether upon established forest protection districts or not. Fire wardens are authorized to enforce the provisions of said Chapter 590 "and the fire laws of the state." The authority and jurisdiction of such fire wardens are not confined to forest protection districts but to any other woods and forest lands.

Although fire wardens seem to have authority to enforce the statutes and laws against the setting of forest fires and the burning of woods and forests not within forest protection districts, care should be exercised so as not to encroach upon the powers and duties of the sheriffs and other duly elected or appointed police officers. This would seem to be desirable as their aid and assistance may and probably will be necessary in connection with the enforcement of such laws and the trial of any accused in the courts of such counties.

BOARD OF PARKS AND HISTORIC MEMORIALS

October 3, 1949.—049-469.

FLORIDA IMPROVEMENT COMMISSION—SELF-LIQUIDATING PLAN—DEVELOPMENT PROGRAM

QUESTIONS: 1. May Florida Board of Parks and Historic Memorials borrow money from Federal Government agencies or any other source?

2. May the Florida State Improvement Commission borrow money for capital investment in State Parks at the request and with the approval of the Florida Board of Parks and Historic Memorials?

3. What would be the general conditions of such financing?

4. What powers would the Improvement Commission have in the administration of such Parks or properties as might be so financed?

To: *Mr. M. B. Greene, Fiscal Agent, Florida Board of Parks and Historic Memorials:*

Section 7 of Chapter 25353, Acts of 1949, contains the following comprehensive language, referring to the Board:

""

From this language, I deduce that your first question should be answered in the negative.

. the right of the State Improvement Commission to borrow money is limited by the character of the property acquired and the possibility of its yielding sufficient income to support the bonds given for the purchase price.

In reply to your third question, it is my opinion that under the powers of the Improvement Commission contracts can be entered into between the Commission and the Park Board covering the acquisition of property under self-liquidating plans. Probably lease-purchase agreements similar to those between the State Road Department and the Improvement Commission could be entered into covering the property to be acquired. It is of course impossible to answer definitely until the details of a proposed transaction are submitted.

In reply to the fourth question, it is my view that as a foundation for financing a purchase, control of the property acquired would have to be vested in the Florida State Improvement Commission sufficient to insure that it would receive the revenues derived from operating the property to retire its obligations issued under a self-liquidating plan. Details of such a program necessarily would be implemented in the contract between the Park Board and the Improvement Commission.

FLORIDA CITRUS COMMISSION

October 14, 1949.—049-490.

FLORIDA CITRUS CODE 1949—SUITS ATTACKING ACT— ATTORNEY'S FEES—FUNDS AVAILABLE—§15(3) (a), CHAPTER 25149

QUESTION: Does the Citrus Commission have authority to use any of the proceeds of the levy made by Section 15(3) (a) of the Florida Citrus Code of 1949 (Chapter 25149, Laws of 1949) for payment of expense of attorney's fees incurred in defending suits brought against the Commissioner of Agriculture and the Citrus Commission to restrain the enforcement of the 1949 Citrus Code?

To: *Honorable C. M. Gay, State Comptroller:*

""

. I am unable to find anything in the Chapter or elsewhere which would prohibit the use of the proceeds of Section 15(3) (a) for payment of reasonable attorney's fees incurred in defense of the Act. It is my opinion that such funds may be used for that purpose.

CHAPTER XXXII

CORPORATIONS AND BUSINESS TRUSTS

CORPORATIONS, GENERAL PROVISIONS

June 15, 1950—050-292.

SECRETARY OF STATE—INVESTIGATIONS—CORPORATIONS— NO PAR VALUE STOCK—VALUATION—AMENDED §610.15, FLORIDA STATUTES APPLICABLE

QUESTION: Under the provisions of Section 610.15, Florida Statutes, as amended by Chapter 25377, Acts of 1949, may the Secretary of State make such investigation as he thinks necessary, and thereby take into consideration the amount of surplus of a corporation, in order to determine the value of shares of no par value stock for the purpose of assessing the annual filing fee required by Section 610.08, Florida Statutes?

To: Honorable R. A. Gray, Secretary of State:

.....
In view of the foregoing authorities, it is my opinion that your question properly is answered in the affirmative.

CERTAIN CORPORATIONS FOR PROFIT

July 23, 1949—049-335.

INSURANCE COMPANY—INCORPORATED—PREFERRED STOCK LIMITED BY CHAPTER 611, §611.06—COMMON STOCK SECTION 625.02

QUESTION: Are insurance companies organized under the laws of the State of Florida permitted to issue preferred stock?

To: Honorable J. Edwin Larson, Insurance Commissioner:

.....
An insurance company incorporated under the provisions of Chapter 611, Florida Statutes, may issue preferred stock under the conditions and as limited by Section 611.06, provided that it has outstanding not less than one hundred thousand dollars in common stock conforming to the requirements of Section 625.02.

FOREIGN CORPORATIONS

November 15, 1949—049-547.

REAL ESTATE MORTGAGES—NONRESIDENT STATE SAVINGS BANKS "INSTITUTIONAL" AS TRUSTEE

STATEMENT and QUESTIONS: Under New York law, savings banks of that state may invest in real estate mortgages encumbering property in other states provided that not less than three of such

banks combined to make their investments through a trustee. Institutional Securities Corporation (referred to as "Institutional," a New York corporation, is owned by not less than twenty of these savings banks and in pursuance of New York Law is authorized to act as trustee for banks making such investments. Institutional heretofore has qualified to engage in business in this State. Institutional at this time as trustee for three of said savings banks, desires to purchase as investments for said banks, Florida real estate mortgages insured by the Federal Housing Commissioner, the notes and mortgages involved to be assigned to Institutional by a Florida corporation to which same will be made. The assignments will be delivered to Institutional in New York and the consideration for said paper will actually be paid for by Institutional there. The details of the trust agreement between Institutional and these three savings banks are set forth in a trust agreement attached to the request for opinion. Arrangements have been made whereby in pursuance of federal laws and regulations, should there be any default in respect to any such mortgages so acquired by Institutional, that corporation will assign such paper to Federal Housing Authority. After Institutional acquires such notes and mortgages, the same will be serviced by a servicing agent located in Florida. Details of the agreement between Institutional and such agent are set forth in a proposed form of contract attached to the request for opinion.

(1) Will the transactions outlined above constitute engaging in business in Florida, and, if so, will such be the business of Institutional?

(2) If the answer to the first question is in effect that Institutional, by virtue of such transactions, will be engaging in business in this State, will the consideration paid for said mortgages by Institutional be a factor in determining the tax to be paid by Institutional under Sections 610.07, 610.08 and 613.02, Florida Statutes?

To: Honorable R. A. Gray, Secretary of State:

.....

(1) In its activities under the trust agreement and as detailed above, Institutional will not offend, or find itself in a position which might offend, the provisions of subsections (4) and (5) of Section 655.27, Florida Statutes. It further appears that Institutional is not a trust company within the meaning of that term as it is used in Section 613.07, Florida Statutes. The transactions resulting in the acquisition of the insured mortgages and notes by Institutional as trustee for such savings banks will be consummated in the State of New York. Thus, serious doubt exists that thereby Institutional will be engaging in business in this state (20 C.J.S. 46, Section 1829); and this doubt will exist even though Institutional proposes to enter into an agreement with a representative in Florida to service such loans after their acquisition. However, as reflected in the above statement of facts, Institutional has qualified to engage in business in this state and, further, in view of the answer to the second question, there appears to be no reason to labor further this phase of Institutional's activities here involved.

Under our laws a foreign state banking association or corporation may not qualify to engage in business in this state. Institutional will not be the mere agent for the three savings banks in the trans-

actions proposed, even conceding that such transactions constitute engaging in business in Florida. (On this point of agency see Willey vs. W. J. Hoggson Corporation, 90 Fla. 343, 106 So. 408). In these transactions Institutional will be the principal; and it appears reasonably certain that under any circumstances the transactions will not be those of the savings banks concerned.

(2) The consideration which Institutional might use in the acquisition of such notes and mortgages would not be a part of its capital but would be the money of said savings banks, and hence, would have no bearing upon the amount of fees required to be paid by Institutional in pursuance of Sections 610.07, 610.08 and 613.02, Florida Statutes, even though it is conceded that such transactions constitute the engaging in business in this state by Institutional.

CORPORATIONS NOT FOR PROFIT

August 26, 1949—049-406.

AUTHORITY TO ACT AS TRUSTEE, EXECUTOR AND RESIDUARY LEGATEE

QUESTION: Where a non-profit corporation organized on May 15, 1934, with charter provisions authorizing it "To act and perform the duties of trustee or to act in any other fiduciary capacity under any deed of trust, will, codicil, agreement, whether oral or written, or other instrument incidental to and for the purpose of carrying out any of the foregoing objects or matters and things kindred thereto," may it lawfully act as trustee, executor and residuary legatee under a will?

To: Crawford and May, Attorneys at Law, Jacksonville, Florida:

.....

Summarizing, it is my opinion that the charter power to act as trustee and executor was void under Sections 1 and 4 of Chapter 6155, but the corporation was given power to act as trustee by Chapter 25346, if, under the circumstances in your case, it satisfies either part of the 1949 statute. I find no authority for it to act as executor. There appears to be no doubt about the capacity of a Florida non-profit corporation to take and hold real and personal property as a residuary legatee within its charter limitations as to value of real estate.

.....

November 14, 1950—050-524.

NONPROFIT HOSPITAL CORPORATION—USE OF PROPERTY CRITERION FOR TAX EXEMPTION

QUESTION: Where a nonprofit corporation is organized and chartered, under and by virtue of the provisions of Chapter 617, Florida Statutes, for the purpose of operating a medical center hospital, is such corporation entitled to exemption from ad valorem taxes under the Constitution and laws of this state?

To: Honorable C. M. Gay, State Comptroller:

.....

In conclusion it appears that the right of a hospital to tax exemption cannot be determined from the statutes under which it was chartered or from the provisions of its charter, but may be determined

only from the actual use and utilization of the property of the institution in question, including its funds and income. The fact that such an institution may be granted exemption one year does not mean that it must be granted a like exemption in succeeding years. Tax assessors should, using the rules mentioned in this opinion, and in the case of *Miami Battlecreek v. Lummus*, 140 Fla. 718, 192 So. 211, and 51 Am. Jur. 606 and 607, Sections 635 and 636, determine the right to exemption, not from the charter of the institution, but from the actual facts found by them as to its operation and use. These observations seem to answer the above question as well as may be.

NONPROFIT COOPERATIVE ASSOCIATIONS

November 14, 1950—050-521, 050-238.

GROWERS' SURPLUS—NONPROFIT ASSOCIATION—CERTIFICATES OF EQUITY—DOCUMENTARY STAMP TAXES

QUESTION: Are those certain *Certificates of Equity in Growers' Surplus*, issued by the Plymouth Citrus Growers Association to its grower members and representing the growers equity in the growers' reserve of the association, which was organized and exists under Chapter 619, Florida Statutes, subject to documentary stamp taxes under Section 201.05, Florida Statutes?

To: Honorable C. M. Gay, State Comptroller:

Documentary stamp tax statute, application.—Chapter 201, Florida Statutes, levies a stamp or excise tax upon certain kinds of written instruments made, signed, executed, issued, sold, removed, assigned or shipped within this state (Section 201.01, Florida Statutes); however, it appears from said chapter that only Sections 201.04 and 201.05, Florida Statutes, might have any application to the certificates issued by the association to evidence the interests of its members in and to the reserves and retained funds in question. Section 201.04, Florida Statutes, levies a tax upon "all sales, agreements to sell or memoranda of sales or deliveries of, transfers of legal title to shares, or certificates of stock or profits or interests in property or accumulations in any corporation, and rights to subscribe for or to receive such shares or certificates. The certificates in question could not be classified as sales, agreements to sell or memoranda of sales or deliveries, etc., so that it has no application. Section 201.05, Florida Statutes, levies a tax upon "each original issue . . . of certificates of stock . . . or profits or interests in property or accumulations, by a corporation" made in this state. Is the certificate in question a *certificate of interest* in property or accumulations, by the association? The certificates in question are not declarations of the rights and interests of the members in accumulations or profits of the association or corporation, but are declarations that the association holds certain reserves or funds retained by it, under a trust arrangement (Chapter 619, Florida Statutes, and the charter and by-laws of the association and its agreements with its members (between the association and its members. The certificates evidence the fact that the reserves and retained funds in question are held by the association in trust for its members as their interests appear from the said certificates. They might be referred to as declarations of trust. The said reserves and retained funds, although held in trust, may be used by the

association, for its members, as provided in and by the statutes, charter, by-laws and the agreements between the association and its members. The statute in question, where there is any doubt of its application, should be resolved in favor of the person upon whom the tax is sought to be imposed (*State v. Sweat*, 113 Fla. 797, 152 So. 432). The property and accumulations mentioned in Section 201.05, Florida Statutes, were probably intended to embrace property and accumulations of the association or corporation as such and not property and accumulations held by it as trustee for others. The certificate in question is in the nature of a certificate or declaration of trust and is not a certificate of an interest in corporate property.

Conclusion.—In the light of the additional facts and matters before us now, that were not before us when our opinion of May 11, 1950, was rendered (050-238) I now feel that our conclusion in said opinion was in error; although I further feel that under the facts and circumstances (which now appear to have been incomplete) then before us the opinion was fully justified. The certificates in question probably are merely declaratory of the certificates of membership previously issued and are in aid thereof. Under this view the case of *Kansas Wheat Growers' Association v. Motter*, Collector, DC Kan., 14 Fed. 2d 242, is probably applicable, as it appears to have involved a similar Federal statute. Much of the state statutes was taken from similar Federal statutes (see *State v. Cook*, 108 Fla. 157, 146 So. 223, text 224). The said opinion of May 11, 1950, (050-238) probably should be revised so as to conform to these views in the light of the additional facts and circumstances.

UNIFORM LIMITED PARTNERSHIP LAW

June 18, 1949—049-264.

LIMITED PARTNERSHIP CERTIFICATE—RECORDING—WORD "LIMITED" OR ABBREVIATION "LTD" REQUIRED

QUESTION: When a certificate providing for the formation of a limited partnership in pursuance of Chapter 620, Florida Statutes, is tendered to the Secretary of State for filing and recording pursuant to Section 620.02, Florida Statutes, should the Secretary of State receive and record such certificate if it appears therefrom that the principal place of business is located at an address in another state and no principal place of business in this state is shown and, further, that the name of the limited partnership does not contain the word "Limited," or its abbreviation, "Ltd."?

To: Honorable R. A. Gray, Secretary of State:

.....
..... in my opinion the above question properly is answered as follows:

It is suggested that the Secretary of State advise the association that its certificate is incomplete in that it fails to state a principal place of business in this state for its operations in this state, and that the partnership name as set forth in said certificate should contain either the word "Limited," or its abbreviation, "Ltd."; and that the filing and recording of the proposed certificate is being withheld until these corrections are made.

.....

October 12, 1950—050-488.

LIMITED PARTNERSHIP—CERTIFICATE OF AUTHORITY—TERMINATION—STATUS—CHAPTER 620, FLORIDA STATUTES

QUESTION: When a limited partnership which heretofore met the requirements of Chapter 620, Florida Statutes, 1949, and thereafter received from the Secretary of State annual certificates of authority, failed for the period of six months beginning January 1, 1940, to file the annual report and pay the annual filing fee required by Section 620.02, and the Secretary of State has published notice of failure of such limited partnership to renew its certificate of authority as set forth in Section 620.31, is there any procedure whereby such limited partnership may be restored to the rights formerly granted under its certificate filed at the time of its formation with the Secretary of State?

To: Honorable R. A. Gray, Secretary of State:

.....

..... in my opinion the above question is answered as follows:

When the rights, privileges and benefits granted to limited partnerships by Chapter 620 have been terminated under the circumstances set forth above in this opinion, there is no way whereby the same may be restored. If those composing such a limited partnership desire to continue the association as such, they may do so only by starting over again, filing with the Secretary of State the certificate (limited partnership agreement), paying the filing fee and receiving new certificate of authority from that public officer.

CHAPTER XXXIII INSURANCE

GENERAL PROVISIONS

April 25, 1949—049-181.

STATE SHERIFFS' ASSOCIATION—BENEFIT FUND—EXACT PLAN NOT SUBMITTED—DEFINITE ANSWER DEFERRED

QUESTION: Florida State Sheriffs' Association, unless there is legal impediment, proposes: (1) that a beneficial fund be set up by the association, the fund to be maintained by voluntary contributions from the participating members of the association and associate members, viz., deputy sheriffs; (2) only voting members and associate members of the association shall be entitled to participate in the fund, and associate members shall be confined to deputy sheriffs employed by the sheriffs and engaged in police work; (3) that in the event of death of a sheriff or deputy sheriff, the amount to be paid a designated beneficiary to be \$1,000; (4) that from past experience it is anticipated that a yearly contribution of from \$10 to \$15 from each member will be sufficient to maintain the fund; (5) there will be no policies issued, no administrative costs, and there will be no provision for assessments, all contributions to be strictly voluntary. Would such a plan constitute engaging in the business of insurance in this state and, as such, be subject to appropriate insurance laws of the state?

To: Honorable J. Edwin Larson, Insurance Commissioner:

.....
"Insurer", as defined in Section 625.01 (6), Florida Statutes, 1941, contemplates a person, firm, corporation, etc., issuing or entering into contracts or policies of insurance. The above plan would not seem to contemplate such a contract. Nevertheless, until there is submitted to this office the exact and detailed plan for a benefit fund which the association contemplates, a more definite answer to the above question must be deferred.

May 10, 1949—049-208.

INSURER AGREEMENTS—CHAPTER 23962, ACTS OF 1947

QUESTION: Are certain agency agreements described below and proposed to be entered into between a foreign fire insurer and two Florida corporate insurance agencies, in violation in any respect of Chapter 23962, Laws of Florida, Acts of 1947?

To: Honorable J. Edwin Larson, Insurance Commissioner:

.....
In view of the foregoing, in my opinion the above question, with respect to both these proposed agreements, is answered in the negative; that is to say, it does not appear that the provisions of these contracts violate in any respect Chapter 23962, Laws of Florida, Acts of 1947.

August 11, 1949—049-374.

FLORIDA STATE FIREMEN'S ASSOCIATION—WIDOWS OF MEMBERS—BENEFIT FUND—POWER OF ORGANIZATION

QUESTION: Will it be legal for the Florida State Firemen's Association to provide for the assessment of \$1.00 per month for each member to create a fund from which shall be paid upon the death of a member of the organization, the sum of \$500 to his widow?

To: Mr. Charles E. Lee, President, Florida Firemen's Association, Daytona Beach, Florida:

.....

According to our information, the Florida State Firemen's Association is an incorporated organization. Granted there are no other legal impediments to the organization's putting into effect the above plan, the question of the power of the organization to engage in such a plan must depend upon its charter provisions.

October 8, 1949—049-481.

AGREEMENT TO KEEP WINDOW GLASS IN GOOD REPAIR IS CONTRACT OF INSURANCE—\$625.01 (6), FLORIDA STATUTES

QUESTION: Is a contract in which a company agrees to keep window glass in good repair for a stated period, with other terms and conditions as described below, a contract of insurance?

To: Honorable J. Edwin Larson, Insurance Commissioner:

.....

..... the question is answered in the affirmative.

INSURANCE COMMISSIONER

February 16, 1949—049-60.

REINSURANCE—NONADMITTED COMPANY—PROPERTY—FIRE RISKS—AUTHORIZATION—COMPLIANCE PROVISIONS, CHAPTER 631, F. S.

QUESTION: Must a fire insurance company, duly organized and qualified as such under the laws of another state, reinsuring fire risks on property in this State directly written by others, file a qualifying bond, or securities, as required by Section 631.06, Florida Statutes, 1941, if: (1) It wishes to reinsure substantially all such risks of a Florida fire company; or (2) It wishes to reinsure only a minor part of such risks of a Florida fire company?

To: Honorable J. Edwin Larson, Insurance Commissioner, Tallahassee, Florida:

.....

In view of the foregoing, in my opinion the above questions properly are answered as follows:

(1) Since the Florida company, under Section 626.11, may not reinsure "substantially all" such risks with a non-admitted company,

it would seem apparent that such out-of-state company desiring to reinsure "substantially all" said risks must be admitted to do business in this State in pursuance of Chapter 631, including the requirements of Section 631.06 thereof.

(2) Since there appears to be no prohibition in our laws against the Florida company reinsuring a minor portion of such risks with a non-admitted company, this question is answered in the negative. It is pointed out, however, that the question of the property of the Florida company claiming credit against its premium reserve for the consideration for such reinsurance is not here dealt with.

April 6, 1949—049-143.

GROUP LIFE INSURANCE—LAKELAND CITY EMPLOYEES ASSOCIATION—REINSURANCE—CONTRACTS VALID—
COMMISSIONER—DUTIES

QUESTION: Missouri State Life Insurance Company by its group life insurance policies Nos. G-3457 and G-3457-A, dated respectively, February 25, 1931, and May 25, 1932, insured the members of Lakeland City Employees Association to the extent and in pursuance of the terms thereof. The policies by their terms may be renewed from year to year upon payment of required premium. In 1933 Missouri State Life Insurance Company became financially involved and General American Life Insurance Company reinsured the above contracts, and from information available to this office it appears that such agreement that accomplished reinsurance of such contracts was executed in the State of Missouri and is a Missouri contract. On September 27, 1934, the then insurance commissioner of Florida advised General American Life Insurance Company that it was unnecessary for it to qualify under Florida laws in order to carry out the business reinsured; and thereafter General American Life Insurance Company appointed a person in Florida as its attorney in fact with authority to accept service of process for it in connection with claims arising under such reinsured contracts. The terms of the contracts provide for insurance of members of the association as they become eligible; and since such policies were issued they have been construed by the insurers and insureds to provide that if a member of said association left the employ of the City of Lakeland, such employee had the right to continue his insurance under such contracts so long as he continued as a member of said association and premiums for his insurance were paid the insurer. The information furnished fails to evidence that the present insurer is represented by any person functioning as an insurance agent in this State.

* In the light of the foregoing, is General American Life Insurance Company authorized to carry out and service the policy contracts reinsured by it, as aforesaid, particularly in view of the fact that new persons, as they are employed, come under the coverage of said contract?

To: Honorable J. Edwin Larson, Insurance Commissioner:

.....
The statements of facts herein contained are based upon those appearing in the request for opinion and the enclosures; and this opinion is conditioned upon the accuracy thereof.

So conditioned, and as related to the duty of the insurance commissioner, the question is answered in the affirmative.

May 5, 1949—049-196.

FLORIDA LIFE INSURANCE COMPANY—SURPLUS—
INVESTMENTS

QUESTION: The securities of Central Conditioning Corporation were registered by qualification with Florida Securities Commission, Permit No. 419, and the corporation is a dealer in its securities, Dealer's Permit 77 (renewal) in the State of Florida. Are securities of said corporation, under the laws of this state, acceptable as purchases by life insurance companies organized under the laws of this state from their surplus?

To: Honorable J. Edwin Larson, Insurance Commissioner:

.....

It is to be noted that this request does not come to the insurance commissioner from a Florida life insurer, but from a corporation which apparently has securities for sale. Whether or not said securities would constitute proper investments for such an insurer would depend upon the status of such securities at the time of such proposed purchase by an insurer. Hence, in the absence of the request of a Florida life insurance company, deriving from a bona fide desire to invest in securities of said corporation, it is suggested that the question properly should not be answered.

August 15, 1949—049-386.

DOMESTIC INSURANCE COMPANY—CAPITAL STOCK—SURPLUS
—INVESTMENT REQUIREMENTS—REINSURANCE— LLOYDS
OF LONDON NOT AUTHORIZED IN THIS STATE

QUESTIONS: 1. What are the minimum investment requirements of an insurance company chartered in 1912 under the laws of the State of Florida?

2. If such company has \$100,000 par value outstanding stock, can the \$100,000 be divided between capital and surplus?

3. Is Lloyds of London an insurer not authorized to engage in business in this state within the contemplation of Sections 626.10 and 631.11, Florida Statutes, relating to reinsurance of Florida risks?

To: Honorable J. Edwin Larson, Insurance Commissioner:

.....

1. This question and a consideration of the laws above mentioned were dealt with in detail by an opinion of one of my predecessors in office, same being opinion No. 047-431, A.G.R. 1947-1948, page 536. In relation to this question, I concur in the reasoning and conclusion therein set forth, except to the minor extent evidenced by the underlined part of the succeeding paragraph. A copy of such opinion is attached hereto.

In the light of the foregoing and such former opinion, it appears that if this company on the effective date of the Revised General Statutes was, and had been since prior to the effective date of Chap-

ter 7869, *Laws of Florida, Acts of 1919*, functioning actively as an insurance company under certificate of authority (Section 626.02) or renewal thereof (Section 626.07) it is included in the quoted proviso from Section 626.04; if not, the proviso does not apply to it. If, under the circumstances here set forth, it is included in the proviso, its investment requirements are to be determined by the provisions of Section 2759, General Statutes, 1906, as amended by Chapter 5887, Laws of Florida, Acts of 1909, or as amended by Chapter 6847, Laws of Florida, Acts of 1915, depending upon the period during which, prior to the effective date of Chapter 7869, Laws of Florida, Acts of 1919, the corporation actively functioned as a domestic insurance company under certificate of authority or renewal thereof.

.....

2. Section 625.02 requires that every domestic insurance company or surety company incorporated under the laws of this state, unless otherwise expressly provided, shall have not less than \$100,000 capital stock, divided into shares of the par value specified, payable in lawful money of the United States. It would reasonably appear, therefore, that no surplus would result in connection with the proceeds derived from the sale of such stock unless such stock were sold in excess of par, and then to the extent of such excess. No surplus is required to start an insurance company. With this explanation, the question as stated is answered in the negative.

3. Without attempting here any discussion of the effect of the provisions of Section 626.10 and 631.11, relating to reinsurance of Florida risks, it is apparent that, as contemplated by said sections, Lloyds of London is an insurer not authorized to engage in the insurance business in this state; and it is remarked that the provisions of Chapter 25414, Laws of Florida, Acts of 1949, are not to be construed as providing otherwise.

November 2, 1949—049-528.

PREMIUMS CEDED—UNAUTHORIZED INSURER—RISKS OUTSIDE FLORIDA—CREDIT ALLOWED

QUESTION: American Title and Insurance Company, Miami, Florida, proposes to cede to National Fidelity Insurance Company, a South Carolina Corporation, fire insurance written by the former on risks in the State of South Carolina. National Fidelity Insurance Company is not authorized to engage in the insurance business in the State of Florida. Should American Title and Insurance Company reinsure any such risks with the South Carolina corporation, will American Title and Insurance Company be given credit against its unearned premium reserve for the consideration paid the South Carolina corporation in connection with such insurance so ceded?

To: Honorable J. Edwin Larson, Insurance Commissioner:

..... Primarily, the question is not one of law, because there is no Florida law directly on the point involved, but one of insurance accounting from the standpoint of the Insurance Commissioner. It is assumed that the Insurance Commissioner would treat the consideration so involved in connection with such reinsurance, in the same manner that he would treat such an item arising with respect to the

ceding of insurance by a Florida company and covering Florida risks to a non-admitted company under contracts which do not offend the provisions of Section 626.10, Florida Statutes. If in the latter instance such credit is allowed by the Insurance Commissioner, it seems reasonable that under like circumstances and conditions he will allow this credit against the premium reserve of American Title and Insurance Company. This would seem to answer the question.

November 28, 1949—049-569.

**FOREIGN INSURERS—ASSETS—G. I. MORTGAGES NOT ACCEPTABLE AS—UNINVESTED CASH NOT AUTHORIZED—
§626.05, FLORIDA STATUTES**

QUESTIONS: (1) Are mortgages insured by the Veterans Administration of the United States for the benefit of former servicemen purchasing homes, acceptable as assets of a foreign insurer applying for a certificate of authority to do business in this state, under the provisions of Section 626.05, Florida Statutes?

(2) Is uninvested cash of such an insurance company an asset as contemplated by Section 626.05, Florida Statutes?

To: Honorable J. Edwin Larson, Insurance Commissioner:

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The above questions are answered in their numbered order as follows:

(1) this question is answered in the negative.

(2) this question is answered in the negative.

April 7, 1950—050-182.

**FOREIGN INSURER—QUALIFICATION REQUIREMENTS—
CHAPTER 626, FLORIDA STATUTES**

QUESTION: What are the requirements, under the statutes of this state, for the qualification of a foreign fire insurance company which exists under the statutes and laws of a foreign country and has not yet qualified to engage in the insurance business in any of the states of the United States, to transact an insurance business in this state?

To: Honorable J. Edwin Larson, Insurance Commissioner:

It is assumed that this insurer is a corporation. Hence, the first requirement is that this company qualify with the Secretary of State, as a foreign corporation, and obtain license to transact corporate business in this state. In addition, it must procure from the Insurance Commissioner of Florida certificate of authority to engage in the insurance business, as contemplated by Section 626.02, Florida Statutes.

Under our laws, the Insurance Commissioner of Florida is charged with the supervision of insurers in this state. It is made his duty to examine into the affairs of any insurer transacting or applying to transact business in Florida (Section 626.01, Florida Statutes). The Insurance Commissioner by the very nature of his duties is vested

with sound discretion in dealing with foreign insurers (44 C. J. S. 560, Section 75). This examination and investigation should embrace the subjects required by our regulatory statutes.

The various provisions of our statutes regulating insurers of the kind described in the question are familiar to the Insurance Commissioner. Only those which appear to require discussion in relation to the question are specifically mentioned.

Foreign insurers of the type here dealt with are required to be possessed of assets worth at least \$250,000 invested in bonds of the United States, of any state, county or municipality in the United States or in mortgages or deeds of trust on improved and unencumbered real estate worth not less than 50% more than the amount loaned thereon at market value (Section 626.05, Florida Statutes).

Insurers against loss by fire or other hazards are required to set aside the unearned portion of premiums in force, computed according to the usual methods, for the protection of their policyholders and coverage (Section 626.11, Florida Statutes).

Every fire insurer licensed to engage in business in this state is required to deposit with the Insurance Commissioner bonds of the United States or of any of the states or District of Columbia, or of cities or counties of this state, or cash, in the amount of \$20,000, or in lieu thereof file with the Commissioner surety bond in the amount of \$20,000 of a surety company authorized to engage in business in this state (Section 631.06, Florida Statutes).

The statutes do not specifically require that the investments described in Section 626.05 or that the unearned premium reserve contemplated by Section 626.11 be maintained in this state.

The purpose and intent of the insurance laws are for the protection of the insuring public. No foreign insurer should be permitted to engage in the insurance business in this state unless and until the interests of the state's insuring public will be adequately protected. The legislature of this state has determined that such public welfare requires the minimum investments, unearned premium reserve and the deposit or surety bond as prescribed by Sections 626.05, 626.11 and 631.06, respectively. These required investments and reserves, as well as the deposit of surety bond, should be as readily available as those of a foreign insurer organized under the laws of a sister state. A judgment obtained by a Florida policyholder against a foreign insurer existing in pursuance of the laws of another state may be carried into that other state if necessary, and there enforced under Section 1, Article IV, United States Constitution. Such a judgment so obtained against a foreign insurer as contemplated by this question may not be carried into another country with the same facility or assurance of collection.

Thus, a distinction is to be drawn between the qualification of a foreign insurer organized and existing under the laws of one of the other states and the qualification of a foreign insurer organized and existing under the laws of another country and not qualified to do business in any of the several states. The duty of the Insurance Commissioner to make periodical examinations of the books and records

of insurers admitted to do business in this state could hardly contemplate the requirement that he be forced to go outside the United States for such purpose. The statutes do not specifically require the maintenance in this country of additional securities by foreign insurers not organized or qualified to do business in a sister state. Yet in the interest of public welfare and in view of the investment and reserve requirements of the statutes noted, it is suggested that the Insurance Commissioner of Florida properly may refuse to issue a certificate of authority to such a foreign insurer unless there shall be made available and maintained under some form of trusteeship in the United States, satisfactory to the Insurance Commissioner, for the benefit of Florida policyholders and subject to be reached by civil process, investments at least equal to and of the character of those described in Section 626.05 and a sum of money or investments in proper securities at all times equal to the unearned premium reserves with respect to policies issued by such an insurer covering Florida risks.

April 20, 1950.—050-209.

**INSURANCE COMMISSIONER—STATE FIRE INSURANCE FUND—
INVESTMENT OF FUNDS—NO AUTHORITY—§284.09, FLORIDA
STATUTES**

QUESTION: May the State Treasurer invest the \$50,000 specifically mentioned in Section 284.09, Florida Statutes, and constituting funds of the State Fire Insurance Fund, in government securities which may immediately be converted into cash if necessary, any such securities so purchased to be held available as a cash balance for use as set forth in said Section 284.09?

To: Honorable J. Edwin Larson, State Treasurer:

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Hence, the question is answered in the negative.

May 22, 1950.—050-250.

**AGREEMENT—CONSTITUTING INSURANCE—"CAR LIFE
GUARANTY"**

QUESTION: Where the distributor of a motor vehicle enters into a written agreement with the purchaser of such vehicle wherein and whereby he agrees, for a consideration to him paid by the purchaser, to replace any defective materials, correct any defect in workmanship, and repair any wear which may appear in the normal use of such vehicle during a stated period of time, with certain exceptions, does such agreement constitute insurance under the statutes and laws of this State?

To: Hon. J. Edwin Larson, Insurance Commissioner:

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In the light of the above and foregoing observations we feel that the above question, in so far as it relates to the correction of defective materials and workmanship, should be construed as a warranty and, in so far as it relates to the correction or repair of damage caused by wear, should be construed as an agreement of insurance within the purview of the statutes of this State. This seems to answer the above question.

May 29, 1950.—050-260.

**SALES CONTRACT, CONDITIONAL—GUARANTY OF PAYMENT—
NOT INSURANCE**

QUESTION: A corporation proposed to purchase by assignment from automobile dealers conditional sales contracts executed by purchasers of automobiles from such dealers which normally the dealers assign to General Motors Acceptance Corporation or Universal C.I.T. and as to which the dealers remain responsible to the assignee-credit company for the payment of the amounts required by such contracts. The corporation upon acquisition of such contracts proposes then to assign them to one or the other of said credit companies, and, as between the dealers and the corporation, to assume responsibility to such subsequent assignees for payment of the balance required by such contracts after the first three installments have been paid thereon by the purchasers thereunder. Would such undertakings as between the corporation and said dealers constitute contracts of insurance?

To: Honorable J. Edwin Larson, Insurance Commissioner:

.....

..... Hence, in my opinion such an undertaking as between the corporation and a dealer would constitute a guaranty to pay money and would not constitute a contract of indemnity (i.e. insurance).

July 20, 1950.—050-347.

**INSURANCE COMMISSIONER—SECURITIES DEPOSITED—
RELEASE OF PORTION—PUERTO RICAN BONDS—SUB-
STITUTION NOT PERMITTED—CHAPTER 626, FLORIDA
STATUTES**

QUESTION: A domestic insurance company engaged in the fire, casualty and title insurance business in this State, recently made application to qualify to engage in one or more of such businesses in Puerto Rico. To meet the requirements of Puerto Rican laws, the company has purchased \$40,000 par value Puerto Rican government bonds, to be deposited with and held by the Florida Insurance Commissioner under the circumstances hereinafter set forth. Heretofore this company made a voluntary deposit with the Insurance Commissioner in pursuance of Section 626.25, Florida Statutes, 1949. The company now requests the Insurance Commissioner to release to it \$40,000 in value in securities out of such voluntary deposit so made. Properly may the Insurance Commissioner release said securities in pursuance of such request?

To: Honorable J. Edwin Larson, Insurance Commissioner:

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..... in my opinion, the above question is answered as follows:

The effect of the request of this insurance company is that the Puerto Rican bonds be substituted for a like value of securities of such voluntary deposit. It is apparent that these Puerto Rican bonds are not included in those securities described in Section 626.04. It would not seem proper that said substitution be permitted; hence, the question is answered in the negative.

September 21, 1950.—050-450—050-347.

INSURANCE COMMISSIONER—PUERTO RICAN BONDS—DEPOSITS—NO AUTHORITY TO ACCEPT—UNDER SECTION 626.25, FLORIDA STATUTES

QUESTION: A domestic insurance company engaged in the fire, casualty and title insurance business in this state recently made application to qualify to engage in one or more of such businesses in Puerto Rico. To meet the requirements of Puerto Rican laws the company has purchased \$40,000 par value Puerto Rican government bonds to be deposited with and held by the Florida Insurance Commissioner under the circumstances hereinafter set forth. Properly may the Insurance Commissioner accept such Puerto Rican bonds as a voluntary deposit to be added to the amount of voluntary deposit heretofore made by this domestic insurance company under Section 626.25, Florida Statutes, 1949?

To: Honorable J. Edwin Larson, Insurance Commissioner:

Reference is made to former opinion of this office No. 050-347, dated July 20, 1950,

The Insurance Commissioner should refuse to accept the proffered voluntary deposit of these Puerto Rican bonds because: (1) such bonds are not of the character of those securities which may be accepted by the Commissioner under Section 626.25; and (2) since the Commissioner has actual knowledge of the requirements of Puerto Rican laws in relation to this proffered deposit and the purpose of such proffered deposit, acceptance of the same, despite the form of receipt therefor which might be issued by the Commissioner, might impose obligations upon the Commissioner which he has no authority to assume.

September 28, 1950.—050-463—050-182.

INSURANCE COMMISSIONER—FOREIGN INSURER—QUALIFICATIONS TO TRANSACT BUSINESS IN THIS STATE—REQUIREMENTS

QUESTION: A fire insurance company of Switzerland desires to enter the insurance business in the United States by qualifying with the Insurance Commissioner of Florida. The company proposes to purchase \$250,000 in United States bonds to be distributed as follows: \$20,000 in value thereof to be deposited with the Insurance Commissioner of this state in pursuance of the requirements of Section 631.06, Florida Statutes, 1949; \$100,000 thereof for the common benefit of all policyholders to be deposited with the Insurance Commissioner of Florida as a voluntary deposit under Section 626.25, Florida Statutes, 1949; \$130,000 of these securities to be deposited with its United States manager, such manager to be an insurance company domiciled in this state, the manager to hold in trust and unimpaired such \$130,000 in securities or to deposit such amounts thereof with the Insurance Commissioner of Florida as will enable the company to do business in other states, or to make specific deposits of amounts thereof with Insurance Commissioners of other states as may be necessary to qualify it in such states. Under these recited circumstances would the Insurance Commissioner of this state be authorized to issue certificate of authority to this company to engage in business in Florida?

To: Honorable J. Edwin Larson, Insurance Commissioner:

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In view of the foregoing, and following the reasoning set forth in opinion 050-182, in my judgment the above question properly is answered as follows:

The Insurance Commissioner would be authorized to issue certificate of authority to this insurer domiciled in Switzerland if it meets the following requirements: (1) Evidence that this company has qualified with the Secretary of State to engage in business in this state. (2) That there is made available to Florida policyholders not less than the full \$250,000 in value of the United States bonds which this insurer contemplates purchasing. Such may be accomplished by the deposit with the Insurance Commissioner of \$20,000 in value of such bonds in pursuance of the requirements of Section 631.06 and the voluntary deposits with the Insurance Commissioner in pursuance of Section 626.25 of \$230,000 in value of United States bonds as a voluntary deposit under Section 626.25; or by this company making the deposit required by Section 631.06 and, in pursuance of an agreement entered into between this company and the Insurance Commissioner, the retention by the Florida manager of the company for the benefits of all policyholders of this insurer in the United States of \$230,000 in value of such securities, instantly available for the satisfaction of policy claims against the company. (3) An agreement between the company and the Insurance Commissioner that there shall be maintained and held by its manager a fund equal at all times to the unearned premium reserve with respect to this insurer's direct writings, and instantly available, if required. (4) An agreement with this manager that at all times there shall be maintained unimpaired in the manner set forth above in this answer, not less than \$250,000 in value of such bonds (or other securities permitted by Section 626.05) and the unearned premium reserve mentioned. (5) Compliance by this insurer with all other insurance laws of Florida.

If this company engages in the direct insuring of risks, the reserves for payment of losses in relation to the total of such risks so written no doubt would be a matter which from time to time would concern the Insurance Commissioner, so that in conformity with sound insurance accounting the total of such risks would not be disproportionate to the total of funds of such insurer instantly available in this country for the payment of losses.

December 4, 1950.—050-542.

INSURANCE COMMISSIONER—BAIL BONDS IN FEDERAL COURTS
—REINSURANCE AGREEMENT—§626.10, FLORIDA STATUTES

QUESTION: Bail bonds, with corporate surety, are acceptable in Federal Courts only if the corporate surety is capitalized at not less than \$250,000.00. An authorized foreign casualty company, capitalized at \$282,840.00, has authorized one of its resident Florida agents to execute such bonds for it, provided such contracts are reinsured 100%. The agent has arranged with a domestic fire and casualty company, capitalized at \$102,000.00, to reinsure such contracts if an agreement to that effect is approved by the Insurance Commissioner. Does there exist any legal impediment to the Insurance Commissioner's approval of such a reinsurance agreement?

To: *Honorable J. Edwin Larson, Insurance Commissioner:*

Hence, the question is answered in the negative.

December 19, 1950.—050-571.

**AMERICAN TRACT SOCIETY, N. Y.—ANNUITY GIFT AGREEMENT
NOT FLORIDA INSURANCE CONTRACT**

QUESTION: American Tract Society, 21 West 46th St., New York, N. Y., is desirous of advertising in this state for the acquisition, by persons in this state, of such society's Annuity Gift Agreements, described below. Would the activities of the Society in the issuance of its Annuity Gift Agreements constitute the engaging by it in the insurance business in this state?

To: *Honorable J. Edwin Larson, Insurance Commissioner:*

the above question is answered as follows:

The execution and delivery by American Tract Society of an Annuity Gift Agreement to a person in Florida would not constitute the negotiation by said Society to such person of a contract of insurance; hence, under no circumstances would the activities of the American Tract Society through its representatives in this state in soliciting gifts and in pursuance thereof issuing annuity gift agreements as above mentioned constitute the engaging in the insurance business in Florida by such Society.

It is to be noted from the above that this opinion is responsible only to the particular question asked and does not deal with any other possible requirements of the laws of Florida which might relate to the activities of this Society and the issuance of its contracts in this state.

AGENTS

January 11, 1949.—049-9.

COMMISSIONS—DIVISION WITH NONRESIDENT AGENT

QUESTION: (1) When insurance coverage is obtained upon a risk in Florida (other than life) by a nonresident agent or broker and the policy covering such insurance is sent to a Florida resident agent of the insurer for issuance and counter-signature as required by law, to whom is the full premium required for such insurance coverage payable?

(2) Under the same statement of facts as set forth in the preceding paragraph, when a Florida agent has so issued and countersigned any such policy of insurance, what portion of the agent's commission on premium therefor may be remitted to such nonresident agent or broker procuring such insurance?

To: *Honorable J. Edwin Larson, Insurance Commissioner, Tallahassee, Florida:*

(1) The full commission on premiums on policies or contracts

covering such insurance, surety or indemnity risks in this state is payable to a duly licensed Florida agent of the insurer issuing such policy or contract (Section 627.20 and 631.15), subject to the proviso mentioned in the succeeding paragraph.

(2) Such a duly licensed resident agent in this state may divide commissions received by or due to him with any non-resident agent, solicitor or broker, duly authorized or licensed in his home state, who shall have procured the business and sent or caused to be sent the policy, bond or other contract to said Florida agent for his counter-signature, as required by law (Section 627.18). But a Florida agent may pay to any such nonresident agent or broker no greater portion of any commission than such nonresident agent or broker may lawfully pay to a Florida agent (Section 627.20). It will be observed that although "solicitor" is mentioned in Section 627.18 and not specifically mentioned in Section 627.20, it is apparent that the provisions of the latter section are applicable to nonresident solicitors as well as non-resident agents and brokers. For further reference to this subject, see Sections 627.11, 627.19, 627.37, 631.02, 631.03, 631.13 and 631.14.

May 7, 1949.—049-202.

**INSURANCE COMMISSIONER—STATUTORY DISCIPLINARY
ACTION—INSTITUTED AGAINST "AGENTS" NOT
"AGENCY"**

On August 26, 1946, an agency agreement was entered into between a foreign insurer and a Florida agency, here referred to as "J-B, Inc." During the period such agreement was in force, the insurer issued, effective September 17, 1947, a workmen's liability compensation policy to a Florida employer, the premium, as is customary, being estimated and subject to later adjustment in pursuance of audit. After the agency agreement had been terminated, and as a result of the audit, the insurer claimed an additional balance of premium and maintained that, under terms of the agency agreement, the agency was liable for such additional amount. It appears that the insured's present whereabouts is not known. The agency refuses to pay such amount and, it is inferred, will contest claim therefor if sued. The attorney for the insurer has complained to the insurance commissioner and has requested a hearing to determine "whether this company (the agency) should be allowed to carry on business under the Insurance Commissioner of the State of Florida." Are the foregoing circumstances and are our statutes such as to warrant and permit the requested disciplinary action by the insurance commissioner with respect to this agency?

To: Honorable J. Edwin Larson, Insurance Commissioner, Tallahassee, Florida:

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The question, therefore, is answered in the negative.

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May 9, 1949.—049-207.

**LIFE INSURANCE COMPANY—PRESIDENT MAY QUALIFY
AS AGENT**

QUESTION: Under the laws of this state may the president of a life insurance company be licensed as a life insurance agent to repre-

sent his company or any other life insurance company, provided he qualified in all respects with the applicable laws of this state?

To: *Honorable J. Edwin Larson, Insurance Commissioner, Tallahassee, Florida:*

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There appears to be nothing in the laws of the State of Florida pertaining to life insurance agents which prohibits the officer of an insurance company being licensed as a life insurance agent, either with respect to insurance written by the company of which he is an officer, or any other life insurance company selecting him as its agent, provided he otherwise meets the requirements of our laws pertaining to the licensing of such agents.

May 18, 1949.—049-220.

NEWSPAPERS—DISTRICT MANAGERS—INSURANCE AGENTS— REQUIRED QUALIFICATIONS

QUESTION: A large newspaper publishing house in this state desires to make the accident insurance policy herein described, available to its readers as a public service. The policy described is a limited accident policy insuring against death, dismemberment or disability, issued by an out-of-state insurer qualified under the laws of this state to engage in the casualty insurance business. The publishing house proposes to have in its circulation department a person qualified as agent who will sign and issue the policies and who will be the only licensed person connected with this program. District managers of the publishing house in charge of carriers will accept applications for the insurance from subscribers. (1) In order to carry out such plan for the sale of insurance, under what law must agents and solicitors for such insurance qualify? (2) Must such district managers be licensed with respect to their services in connection with such sale of insurance?

To: *Honorable J. Edwin Larson, Insurance Commissioner, Tallahassee, Florida:*

.....

In view of the foregoing, in my opinion the above questions are answered in their numbered order as follows:

(1) Any persons engaged in the sale of such insurance and performing acts in connection therewith which would make them agents for the insurer within the meaning of our insurance laws as indicated above, must be qualified under the laws of this state related to the qualifications of fire, marine, casualty or surety insurance agents and solicitors.

(2) It would seem that the district managers of this publishing house in performing the services contemplated in connection with the sale of such insurance would be required to qualify as agents or solicitors under said laws related to the qualifications of fire, marine, casualty or surety insurance agents.

May 19, 1949.—049-222.

ACCIDENTAL DEATH POLICIES—QUALIFICATIONS— EXAMINATION REQUIREMENTS

QUESTION: A foreign life insurer has qualified and holds certificate of authority to issue life insurance contracts in this state, but

does not write double indemnity insurance. Arrangements have been made between the life insurer and a casualty company to underwrite such double indemnity feature by means of said latter company's contract, providing coverage for accidental death. May the licensed insurance agents of the life insurer be licensed as agents for the casualty company to issue and sell such accidental death contract proposed to be issued by the latter company?

To: Honorable J. Edwin Larson, Insurance Commissioner:

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There seems to be no legal impediment to the agents of this life insurance company being appointed and licensed as agents for the casualty company to negotiate and sell the latter company's accidental death policies. However, any such life agents so desiring to be appointed as agents for the casualty company must meet the qualification and examination requirements for agents for fire, marine, casualty or surety insurance companies, generally as set forth in various sections of Chapter 627, Florida Statutes, and particularly as detailed in Section 627.03-627.06 thereof.

May 30, 1949.—049-270.

INSURANCE COMMISSIONER—INSURER—AGENCY AGREEMENT
TERMS—TIME—SUBJECT TO APPROVAL

QUESTION: Should the Insurance Commissioner approve a proposed general agency contract between a domestic mutual insurance company and a corporate agency, which proposed agreement has incorporated therein, among other provisions, certain features described below?

To: Honorable J. Edwin Larson, Insurance Commissioner:

The request for opinion solicits recommendations and suggestions concerning the proposed agreement and in pursuance thereof relevant features are discussed as follows:

(1) The agency is granted the right to "procure, train, appoint and direct agents acceptable" to the insurance company. Agents are appointed by life insurers (Section 634.04, Florida Statutes, as amended); nevertheless it would seem that since the quoted provision requires that agents appointed by the agency shall be "acceptable" to the insurance company, the effect of this contract provision is not at variance with the law mentioned.

(2) The agreement provides the amount of commissions payable to the agency and to the agents of the company. Whether or not these commissions are reasonable is a matter which must be decided by the insurance commissioner.

(3) The agreement is for an initial period of five years and, in effect, provides for an automatic five-year extension of the period unless one of the parties gives a sixty-day written notice of its desire to terminate the contract prior to the initial five-year period. If no such notice is given, the contract as prepared, is for a ten-year period, not subject to cancellation by either party under any other express provision of the contract. In view of the subject matter and possible change of conditions, it is suggested that the extension for an addi-

tional period of five years should not be approved by the commissioner, but that any extension provided subsequent to the initial five-year period should be subject to approval by the commissioner as to the terms and time involved.

(4) Considerable authority is granted by the insurance company to the agency under this proposed agreement. An insurance agency is not under the disciplinary control of the insurance commissioner regarding its acts and practices as an insurance company and its agents are. For instance, without here attempting to rule upon the matter, it might be held that under the provisions of Chapter 643, Florida Statutes, as amended, an insurance agency is not amenable to the provisions of law found therein concerning the regulation of trade practices in the insurance business (see definition set forth in Section 643.02(1)). Hence, to remove all doubt, it is suggested that the agreement properly should contain a provision for cancellation thereof upon short notice by the insurance company should the agency indulge in any acts or practices which, if done by the insurance company or its agents, would fall within the disciplinary power of the insurance commissioner under any of our statutes.

August 3, 1949—049-361.

APPLICATION FOR LICENSES—FILING FEES—SPECIAL FUNDS—
CHAPTER 25406, §5, ACTS 1949 APPLICABLE

QUESTION: Should the filing fees paid in connection with applications for license as accident and health insurance agents be placed in the special fund, as set forth in and contemplated by Chapter 25406, Laws of Florida, Acts of 1949, or should such fees be placed in the general revenue fund in pursuance of Chapter 25068, Laws of Florida, Acts of 1949?

To: *Honorable C. M. Gay, State Comptroller:*

.....

The filing fees contemplated by the question shall be placed in a special fund for use as provided in Section 5 of Chapter 25406. With respect to such fees, the provisions of Chapter 25068 are superseded by Chapter 25406.

August 9, 1949—049-372.

REINSURANCE—ADMITTED INSURER—FLORIDA RISK—NON-
ADMITTED INSURER—CHAPTER 25414, ACTS
1949 NOT APPLICABLE

QUESTION: Does Chapter 25414, Laws of Florida, Acts of 1949, authorize an admitted insurer to reinsure a Florida risk insured by it with a non-admitted insurer?

To: *Honorable J. Edwin Larson, Insurance Commissioner:*

..... the question is answered in the negative.

November 17, 1949—049-557.

TRANSACTION DIRECTLY WITH NONADMITTED INSURER—VIO-
LATION OF §15, CHAPTER 25414, ACTS OF 1949

QUESTION: When the owner of property in this state obtains

insurance thereon of the kind contemplated by Section 1, Chapter 25414, Laws of Florida, Acts of 1949, from a nonadmitted insurer in a transaction directly with the insurer, is such owner violating the provisions of Section 15 of said Chapter 25414?

To: Honorable J. Edwin Larson, Insurance Commissioner:

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..... Whether Section 15 as thus applied to the owners of property located in Florida offends the federal commerce clause or is otherwise invalid as a state police regulation can be settled with finality only by the courts. Unless and until a court in appropriate case shall adjudge such provision of law invalid, under the circumstances here found it is considered proper that this office should accept the law as written and assume the position that it is to be observed.

Therefore, as conditioned above, the question is answered in the affirmative.

December 7, 1949—049-579.

ALIEN INSURANCE AGENTS—LICENSE—U. S. CITIZENSHIP NOT REQUIRED

QUESTION: May an alien who otherwise meets the requirements of our statutes be licensed as an insurance agent in Florida?

To: Honorable J. Edwin Larson, Insurance Commissioner:

.....

The statutes referred to above would seem to contemplate that an applicant for license must be domiciled in this state; that is to say, that he has come to this state and has established his legal residence or domicile in this state. The fact that he is an alien would not seem to be of consequence.

Hence, subject to the conditions and remarks set forth above, the question is answered in the affirmative.

December 7, 1949—049-582.

EMPLOYEES—INSURANCE WRITTEN FOR—COMMISSIONS— VIOLATION FLORIDA LAWS

QUESTION: May an insurer, general agency or local agency, allow the commission payable on insurance written for its salaried employees to said employees without violating the laws of Florida?

To: Honorable J. Edwin Larson, Insurance Commissioner:

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In view of the foregoing, the above question is answered as follows:

The question is answered in the negative; that is to say, that an insurer, general agency or local agency may not allow the commission payable on insurance written for its salaried employees to said employees without offending certain of the laws above mentioned.

May 26, 1950—050-257.

**INSURANCE COMPANY DIRECTOR—INELIGIBLE TO SERVE AS
AGENT—CHAPTERS 625, 627, FLORIDA STATUTES**

QUESTION: May a member of the board of directors of a fire, marine, casualty or surety insurer, whether compensated or not, who is not otherwise an "officer" of the company, properly be licensed as a Florida resident agent of such company?

To: Honorable J. Edwin Larson, Insurance Commissioner:

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Therefore, in my opinion, properly the question is answered in the negative.

June 3, 1950—050-266.

**INSURANCE COUNSELOR—ISSUANCE OF LICENSE AS AGENT—
CHAPTERS 643, 634, FLORIDA STATUTES**

QUESTION: May a person who holds himself out to the public as an "insurance counselor" be issued a license as a life insurance agent?

To: Honorable J. Edwin Larson, Insurance Commissioner:

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Because of the ramifications of the question as above noted, I hesitate to answer it short of an actual application of such an "insurance counselor" for a life agent's license, and a detailed statement setting forth the nature of the services such "counselor" purports to furnish for a fee to those of the general public seeking his advice.

RECIPROCAL OR INTER-INSURANCE

May 9, 1949—049-203.

**ORGANIZATION—CASUALTY INSURER—STATEMENT FILED
WITH INSURANCE COMMISSIONER—RESERVE
FUND REQUIRED**

QUESTION: A group of business men desire to form an association of their own members to act as self-insurers as to the liability arising out of negligence actions against members of the association.

(1) Properly may the insurance commissioner issue a certificate of authority to such a group associated together under the provisions of Chapter 609, Florida Statutes, 1941, relating to common law declarations of trust or will it be necessary for this group to incorporate under the provisions of Chapter 611, Florida Statutes, 1941?

(2) May the investments required in Section 626.04, Florida Statutes, 1941, be omitted by substituting therefor any type of bond or any insurance agreement?

(3) Is it necessary to file the statement of investments required under Section 626.07, Florida Statutes, 1941, before the certificate of authority is issued?

(4) Would the reserve requirements of Section 626.11, Florida Statutes, 1941, be applicable to an association organized under Chapter 609, Florida Statutes, 1941?

(5) Is it necessary for a casualty insurer to deposit bonds or in lieu thereof to file a surety bond with the commissioner as required of fire insurance companies under Section 631.06, Florida Statutes, 1941?

(6) Other than the investment requirements of Section 626.04, Florida Statutes, 1941, would the office of the insurance commissioner require any particular capitalization before a certificate of authority would be granted to a group associated together under a common law declaration of trust?

To: Honorable J. Edwin Larson, Insurance Commissioner:

(1) It follows that such a group properly may not associate themselves together to engage in the business of casualty insurance under the provisions of Chapter 609, Florida Statutes, 1941.

(2) If this group of business men organize as a corporate insurer under Chapter 611, then prior to issuance of license it would be necessary for such insurer to be possessed of the investments required under Section 626.04. If this group of men attempt an organization as a reciprocal exchange as provided by Chapter 628, the requirements prerequisite to obtain a certificate of authority are clearly set forth in that chapter.

(3) If the organization is a corporate one, as above indicated, as a prerequisite to the issuance to it of a certificate of authority there must be filed with the commissioner the statement under oath as required by Section 626.02, which among other things, must evidence the investments required by Section 626.04. The showing with respect to investments in Section 626.07 has to do with showing required as prerequisite to annual renewal of certificate of authority to an insurer who has prior thereto been issued a certificate of authority.

(4) If the organization is a corporate one under Chapter 611, the reserve requirements of Section 626.11 related to a casualty insurer must be complied with. If this group should organize under Chapter 628, the provisions of that chapter would seem to be controlling as to reserves required.

(5) The bonds or surety bond required to be deposited with the insurance commissioner by Section 631.06 would be applicable only with respect to an insurance company engaged in the writing of fire insurance and would not apply to a casualty insurer not engaged in the business of writing fire insurance.

(6) In view of the remarks set forth above it does not seem necessary to answer this question.

October 25, 1949—049-526.

RECIPROCAL INSURERS'—LICENSED AGENTS—COUNTER-SIGNATURE NOT REQUIRED—AMENDED §628.12 F. S.

QUESTION: Under Section 628.12 Florida Statutes as amended by Section 2 of Chapter 25355, Laws of Florida, Acts of 1949, is it re-

quired that contracts of insurance issued by reciprocal or interinsurance exchanges covering such risks in this state as workmen's compensation, liability and automobile coverages be "countersigned by an insurance agent, who is a resident of Florida and duly licensed as such agent under the laws of Florida?"

To: Honorable J. Edwin Larson, Insurance Commissioner:

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In view of the foregoing, in my opinion the above question is answered as follows:

Automobile coverages in this state as above described, involve the "covering of property in this State" within the meaning of such words as they are used in amended Section 628.12, and hence such contracts by virtue of said section are required to be countersigned by a duly licensed resident agent of the reciprocal or interinsurance exchange issuing such contracts.

Contracts and policies of insurance issued by reciprocal and interinsurance exchanges and covering risks in this state specifically in the field of liability and workmen's compensation insurance, are not contracts "covering property in this State" as contemplated by amended Section 628.12, and hence such contracts are not required to be countersigned by a duly licensed resident agent of such an insurer.

FIRE AND CASUALTY INSURANCE

September 12, 1949—049-435.

INSURANCE COMMISSIONER—BONDS—RELEASE—SUFFICIENT EVIDENCE FOR—§631.10, FLORIDA STATUTES

QUESTION: The Hamilton Fire Insurance Company of Des Moines, Iowa, has requested that the Insurance Commissioner return to them \$20,000 United States Treasury bonds deposited by it with the Insurance Commissioner in pursuance of Section 631.06, Florida Statutes. Said company has elected to cease to do business in this state and holds no certificate of authority at this time, date of their last certificate of authority being March 1, 1947. Under the provisions of Section 631.10, Florida Statutes, does the evidence submitted by this company, described below, sufficiently establish the fact that the company has satisfied its liability, fixed or contingent, upon policies heretofore issued by it to persons residing in this state, so as to warrant the release of said bonds?

To: Honorable J. Edwin Larson, Insurance Commissioner:

..... Supporting the company's request for return of these bonds is an affidavit For several reasons, the form of the affidavit so submitted is not satisfactory.

The following form of affidavit will be acceptable for the purposes mentioned if executed by the corporate officials named:

"....." (Form of affidavit set out).

If this affidavit is executed and delivered to the Insurance Commissioner of Florida, along with certified copy of such excerpts of the

minutes of the meeting of the board of directors of said company, evidencing that such named persons are at present the described officials of said company, and the Insurance Commissioner has knowledge of no facts contrary to the statements set forth in said affidavit, he may accept the same as sufficient evidence, as contemplated by Section 631.10, to warrant delivery by him to said company of the above mentioned bonds.

November 15, 1950.—050-527.

**DOMESTIC INSURANCE COMPANY—INDEMNITY BOND—
AGENT'S COUNTER-SIGNATURE REQUIRED—§631.15,
FLORIDA STATUTES APPLICABLE**

QUESTION: When a domestic insurance or surety company, acting through an executive officer, executes and issues directly to the person indemnified an indemnity bond, is such bond required to be counter-signed by a "local producing agent" of such company, under the provision of Section 631.15, Florida Statutes, 1949?

To: Honorable J. Edwin Larson, Insurance Commissioner:

.....

..... the question is answered in the affirmative.

DOMESTIC MUTUAL FIRE INSURANCE ASSOCIATIONS

April 6, 1950—050-180.

**STATE AGENCY PROPERTY IN MUTUAL COMPANY—DOMESTIC
OR FOREIGN—CREDIT NOT TO BE PLEDGED OR LOANED—
CHAPTER 632, FLORIDA STATUTES—§9, ARTICLE 10,
FLORIDA CONSTITUTION**

QUESTIONS: (1) Under what circumstances may the state or its agencies insure its property in a mutual fire insurance company, domestic or foreign?

(2) If a policy issued by a mutual company covering state property provides that the insured is a member of the company and entitled to vote with respect to corporate affairs, does such provision offend Article 9, Section 10, Florida Constitution?

(3) If a policy issued by a foreign mutual fire insurer provides that the same is non-assessable and non-participating, may the state or its agencies assume that such is permitted by its charter powers and the laws of its home state?

To: Honorable J. Edwin Larson, Insurance Commissioner:

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For previous opinions of my predecessors in office bearing upon this subject, see A. G. R. 1933-34, pages 426 and 428, A. G. R. 1937-38, page 161; and A. G. R. 1941-42, page 734.

.....

(1) The state and its departments are authorized to insure properties with domestic and foreign mutual fire insurance companies if the policies providing the insurance coverage are issued on a non-assessable and non-participating basis.

(2) As long as Sections 632.11 and 632.13, Florida Statutes, remain undisturbed, the fact that a policy issued by a domestic or foreign mutual fire insurance company designates the policy holder as a member and entitled to vote with respect to corporate affairs will not be construed as constituting the state a "joint owner or stockholder" of any such company, within the meaning of such words in Article 9, Section 10, Florida Constitution.

(3) In view of the fact that all insurers are subjected to examination by competent public authorities from time to time, it is considered that reasonably when the policy of a foreign mutual fire insurance company provides that the same is non-assessable and non-participating, it may be assumed that such provisions are in pursuance of the charter powers and statutes of the insurer's home state.

LIFE INSURANCE, GENERALLY

May 18, 1949—049-221.

GROUP INSURANCE—PUBLIC EMPLOYEES—COUNTY SCHOOL BOARD—DISCRIMINATION

QUESTION: When a county board of public instruction has elected to provide group insurance for its school teacher employees, and certain of such employees have voluntarily elected to participate therein, and the insurance plan has thus become effective, all as contemplated by Sections 112.08-112.14, Florida Statutes, may the insurance company issue free of premium charge to a bookkeeper of said school board an insurance certificate under such group insurance plan as compensation to said bookkeeper for work involved in setting up records, making group insurance premium deductions, submitting itemized monthly premium statements to the company, etc., in connection with said insurance plan?

To: Honorable J. Edwin Larson, Insurance Commissioner, Tallahassee:

.....

..... the question is answered in the negative.

May 19, 1949—049-226.

FLORIDA STATE DENTAL SOCIETY—TRUSTEE OWNERSHIP POLICIES—DISCRIMINATION—CONTRAVENTION LAWS OF FLORIDA

QUESTIONS: It is proposed by Continental Insurance Company, Chicago, Illinois, to issue to those members of Florida State Dental Society electing to take same, trustee ownership policies of insurance sufficiently described below:

(1) Under the proposed plan basically the policy to be issued individual members will provide guaranteed life income of \$50 per month from a certain retirement age with \$5000 life protection until age 65. If 75% of the membership enroll, *no medical examination with respect to insurability will be required*. If as few as 30% of the membership enroll, the plan will still be effective, but certain medical requirements will be imposed as to those of 40 and over.

(2) The plan will be applied for through a trust, the state officers of the organization to be the trustees. If the plan is accepted by the requisite membership, a trust indenture will be completed to include all standard, usual and ordinary provisions commonly used in a pension trust agreement. The trustees named in the individual policy will be the owners thereof. Nevertheless each member coming under the plan will have a policy issued to him setting forth all terms, conditions and benefits thereunder.

(3) In the data which accompanied the request for opinion it is not shown that this company would issue to an individual a policy with the same coverage as here provided at a premium rate as low and under circumstances as favorable as that contemplated for the individual members of this Society. However, it is assumed that such would not be done; and that from an actuarial standpoint, should not be done. While it is not controlling here, it is significant that in the copy of the plan sent to the members of this Society by the Chairman of its insurance committee, a comparison of the plan with the same plan offered on an individual policy basis by four of the leading insurance companies evidences that this trustee ownership plan will cost less as to premium and show guaranteed profits greater than afforded by such individual policy plans.

(4) The insurer asserts there is no discrimination in the issuance of this form of policy since it is issued to any trustee; that cash values are substantially high in the early years, returning approximately 60% after the first year; that the dividend schedule is lowered and soliciting agents' commissions are lowered; and that the ultimate net cost of this form of policy is very little different from that of the regular participating form of policy.

Would the issuance of policies in pursuance of said plan be in contravention of the insurance laws of this state?

To: *Honorable J. Edwin Larson, Insurance Commissioner, Tallahassee, Florida:*

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Only the courts in a proper case involving the construction of these statutes could decide this question with finality. In the absence of such construction, in my opinion, the better position seems to be that policies issued in pursuance of the insurance plan found here would offend Section 635.02; hence, the question is answered in the affirmative.

June 1, 1950—050-263.

INSURANCE—PROPOSED GROUP LIFE CONTRACT—ST. PETERS-
BURG BOARD OF REALTORS—CHAPTER 25189, ACTS
1949—§§635.24-635.26, FLORIDA STATUTES

QUESTION: The Minnesota Mutual Life Insurance Company proposes to issue a group life policy and certificates of participation thereunder to participating employers who are members of St. Petersburg Board of Realtors, according to forms of such policy and certificate furnished and discussed below. The request for opinion states that the company is negotiating with said board "relative to the

writing of a group insurance contract providing Life, Accidental Death and Dismemberment, and Accident and Sickness benefits to the members of said association and the employees of the members." May such insurance, according to the terms and provisions set forth in the forms of such policy and certificate furnished, be issued in conformity with the laws of this state?

To: Honorable J. Edwin Larson, Insurance Commissioner:

It appears from a copy of charter which accompanied the request for opinion that St. Petersburg Board of Realtors is a corporation not for profit. Its members consist of those actively engaged in the real estate business or interested therein as property owners or otherwise, admitted as members in the manner set forth in the charter and by-laws of the organization.

The proposed group policy, among other things, provides for issuance of a policy to trustees of the insurance fund of said organization and the insurance of certain employees of "participating employers" of the organization. In addition to other qualifying terms, a participating employer under the policy is required to have three or more full-time employees "which may be insured" in pursuance of the policy. Those eligible for insurance under the policy include all employees of a participating employer except parttime employees. The amount of insurance on each insured employee as provided, is "Sole owners, Partners, Officers \$3000," and "All other employees \$1000." The insurance provided by the policy is group term life insurance.

Any authority for issuance of a group life policy to such a group of employers must be found in subsection 1(4), Chapter 25189, Laws of 1949. This subsection is ambiguous as to meaning. It begins as follows: "A policy issued to the trustees of a fund established by one or more employers *and* one or more labor unions . . ." In the light of the further provisions of this subsection, the question is whether or not the underscored quoted word "and" is to be given its conjunctive meaning or is to be construed as the disjunctive "or". Unless such latter construction is tenable, obviously this policy may not be issued to this group of employers. It is elementary that the intent of a statute is the law (*State v. Patterson*, 67 Fla. 499, 65 So. 659); that the legislative intent is to be sought in construing a statute (*Davis v. Florida Power Company*, 64 Fla. 246, 60 So 759; *State v. Rose*, 97 Fla. 710, 122 So. 225); and to attain this end the courts at times have been required to construe the conjunctive "and" as the disjunctive "or" (*Crawford Statutory Construction*, Section 188, and citations). A consideration of all the wording of subsection 1(4) leads to the reasonable conclusion that the word "and" mentioned above in this paragraph is to be construed as though the word "or" had been used in its stead.

Section 2, Chapter 25189, requires such a group policy to contain in substance certain stated provisions, or provisions which in the opinion of the Insurance Commissioner "are more favorable to the persons insured, or at least as favorable to the persons insured and more favorable to the policyholder", with certain named exceptions.

With these preliminary statements, the proposed policy here dealt with is commented upon as follows:

(1) Because the request for opinion mentions not only life but accidental death and dismemberment and accident and sickness insurance, it is here remarked that this policy provides only term life insurance with provisions for extended insurance benefits to persons insured thereunder who become totally disabled as a result of bodily injury or disease.

(2) Subsection 1(4)(a) specifies that the policy may provide that the term "employees" shall include, among others, the individual proprietor or partners if a member is an individual proprietor or a partnership. An examination of this policy fails to disclose such a provision. Hence, the above mentioned amount of insurance sought to be provided "Sole owners, Partners" would not seem to be authorized.

(3) Subsection 1(4)(b) requires that the premium for a policy of this kind shall be paid by the trustees wholly from funds contributed by the employer or employers of the insured persons and that, "No policy may be issued on which any part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance." The policy and the certificate to be supplied each insured are not at all clear concerning this feature. Nevertheless, it is evident from the terms of these that certain of the insured employees are required to contribute to the premium required for the policy. This seems to be a departure from the quoted wording of subsection 1(4)(b).

(4) Subsection 1(4)(c) requires that such a policy must cover at date of issue at least 100 persons and not less than 10 persons "per employer unit." The policy would seem to provide that a participating employer thereunder shall have three or more fulltime employees. Hence, it appears that the policy as a condition to its issuance should specifically provide that it covers at least 100 persons and further the provision in the policy permitting insurance of employers in numbers less than 10 would seem to be precluded by the subsection mentioned.

(5) With respect to the required policy provisions under Section 2, Chapter 25189, the following apparent variations between the policy provision in this form and the required provisions are called to the attention of the Insurance Commissioner so that he may determine whether in his opinion the absence of such required provisions result in the policy being as favorable to or more favorable to the persons insured as though such provision were incorporated in the policy:

(a) Subsection 2(1) requires a provision in the policy for a grace period of 31 days for payment of any premium except the first one. The policy form provides a grace period of one month, not less than 30 days.

(b) Subsection 2(2) requires the policy provision that its validity shall not be contested except for non-payment of premiums after it has been in force for two years from its date of issuance. The policy form here has the provision that the same shall be incontestable after one year from its date of issue except for non-payment of premiums. It is submitted for the consideration of the Insurance Commissioner that the provision in the policy form is more favorable to the insured than the statutory required provision.

(c) Subsection 2(2) also requires a policy provision that "no statement made by any person insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two years during such person's lifetime nor unless it is contained in a written instrument signed by him." The policy form does not evidence such a required provision.

(d) Subsection 2(3) requires the provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued and that "all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or to his beneficiary. This policy form appears to have no provision conforming to this quoted portion of Section 2(3).

Note: This opinion supplemented by Opinion No. 050-405.

June 16, 1950—050-294—(Substitute)—050-15—050-221.

COUNTY SCHOOL BOARD—EMPLOYEES—GROUP INSURANCE—
CHARGE BY EMPLOYER—HANDLING PAYROLL
DEDUCTIONS—VIOLATION

QUESTION: Would it constitute a violation of any of our laws if a county school board received from an insurer amounts from time to time to compensate the board for deducting premiums from the payrolls and remitting premium payments to the insurer on group insurance written on the employees of the board by such insurer?

To: *Honorable J. Edwin Larson, Insurance Commissioner, Tallahassee, Florida:*

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In absence of a court construction of the effect and intent of Sections 625.01 (1) (b) and 634.02, Florida Statutes, in relation to this question, ordinary caution dictates that this question be answered in the affirmative.

August 18, 1950—050-263—050-405.

ST. PETERSBURG BOARD OF REALTORS—EMPLOYEES—GROUP
LIFE INSURANCE—SUPPLEMENT TO OPINION NO. 050-263.

QUESTION: Opinion 050-263, dated June 1, 1950, directed to the above official, dealt with the legal propriety of forms of group life policy and certificate of participation proposed by Minnesota Mutual Life Insurance Company insuring employees of participating employers who are members of St. Petersburg Board of Realtors. Do the forms of group life policy and certificate of participation now submitted and proposed to furnish the coverage mentioned above meet the requirements of said former opinion and the laws of the state relating to group life insurance?

To: Honorable J. Edwin Larson, Insurance Commissioner:

This opinion supplements former opinion 050-263, to which reference is made. To avoid confusion, it is to be noted that Subsection 1(4) and Section 2, Chapter 25189, Laws of 1949, referred to in the former opinion, are herein designated as Subsection 635.24(4) and Section 635.25, Florida Statutes, 1949.

It is to be understood that this opinion does not purport to deal with the policy provisions here found except as the same may be at variance with positive provisions of Subsection 635.24(4) and Section 635.25; neither does this opinion assume to exercise discretion vested in the Insurance Commissioner, as mentioned hereinafter.

This proposed form of group life policy is commented upon as follows:

(1) This policy is proposed to be issued to trustees of the insurance fund of St. Petersburg Board of Realtors, a non-profit corporation. The form of policy previously submitted had a similar provision, to which no objection was urged in 050-263; yet upon further consideration it is felt that the trusteeship proposed is not permitted by subsection 635.24(4). While there appears to be no objection to limiting the participating employers to those who are members of such organization, the first sentence of said subsection would seem to contemplate that such policy shall be issued to trustees of a fund established by one or more employers—not trustees of a fund of this corporate organization.

(2) Subsection 635.24(4)(c) requires that at date of issue the policy must cover at least one hundred persons and not less than ten persons per employer unit. It would seem that ordinarily where employers unite to obtain this coverage for their employees that there would be no additions to the employers participating. It is to be noted that after this policy is issued employers not originally under the plan may participate therein, as set forth in the form of policy. There seems to be no legal impediment to this. Nevertheless, where such is permitted, as here, it would seem reasonable that Subsection 635.24(4)(c) contemplates that to become eligible to participate in the plan, an employer must have not less than ten eligible employees to be insured thereunder. Hence, provisions in the policy permitting employers to participate therein after the policy has been issued who have not ten employees to be covered thereby offends this reasonable construction of the law (e. g., paragraph (3) under "Participating Employers" and paragraph (2) under "Effective Date of Insurance," in the policy form.)

(3) Subsection 635.24(4)(c) provides that the policy shall not require that if a participating employer discontinues membership in the trusteeship, the insurance of his employees shall cease solely by reason of such discontinuance. In the policy under the heading "Termination of an Employee's Insurance," there is the provision that an employee's insurance shall terminate automatically upon the first to occur of the following events: (1) termination of employment (as therein provided in detail); (2) cessation of employee's employer as a Participating Employer; and (3) termination of policy. Since the par-

ticipating employers pay the premium required for their employees, in pursuance of Subsection 635.24(4)(b), it is quite apparent that the law does not contemplate that other participating employers would be charged with that duty of continuing payment of premiums for the employees of an employer ceasing to participate in such plan; hence, to give meaning to that part of Subsection 635.24(4)(c), the same must be read in conjunction with Subsection 635.25(8). This policy under the heading, "Conversion Privilege" would seem to meet the requirements of the subsection mentioned.

(4) Section 635.25 sets forth, as conditioned therein, that group life policies shall contain certain provisions, or provisions which, in the opinion of the Insurance Commissioner, are more favorable to the persons insured or at least as favorable to the persons insured and more favorable to the policy holder. The following are mentioned for consideration of the Commissioner:

(a) Subsection 635.25(2) requires a policy provision that the validity of the policy shall not be contested, except for non-payment of premiums, after it has been in force for two years from its date of issue; and "that no statement made by any person insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two years during such person's lifetime nor unless it is contained in a written instrument signed by him." The policy provides that it "shall be uncontestable after one year from its date of issue, except for non-payment of premium." Whether or not the quoted provision of the policy is as favorable or more favorable to the insured than the quoted requirement of the policy is a matter to be determined by the Insurance Commissioner.

(b) Subsection 635.25(3) provides in part that, "no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or to his beneficiary." There does not appear to be any policy provision the same, in effect, as such quoted words.

(5) The first paragraph in the Certificate of Participation, under the heading, "Facility of Payment," should be made to accord with the first paragraph in the group policy under the heading, "Facility of Payment."

December 1, 1950.—050-540.

**"THRIFTSURANCE" PLAN—GROUP INSURANCE COVERAGE—
NOT AUTHORIZED UNDER THE LAWS OF FLORIDA**

QUESTION: Is the proposed group life and disability insurance coverage in connection with a savings plan, designated "Thriftsurance" Plan, of Thriftsurance Plan Corporation, Miami, Florida, as described below in this opinion, permitted under our laws relating to group insurance coverage?

To: Honorable J. Edwin Larson, Insurance Commissioner:

The plan mentioned above is here sufficiently described as follows: a person, designated the Depositor-Obligor (hereinafter referred to as

"depositor") executes an application which constitutes an agreement with a bank or savings institution (hereinafter referred to as "institution") that he will deposit to a savings account in such institution a specified monthly amount not to exceed \$100 and for a stated period not to exceed a certain number of months. Incorporated in the application is a request for participation by the depositor in a group life and accident and health insurance contract subsisting between a life insurance company and the institution, which contract is a part of said plan. The depositor is charged with his portion of the premium for such insurance when he opens his savings account. If prior to the time such savings plan is completed the depositor dies, the institution will receive from the insurer for credit to his savings account the unpaid balance contemplated by the plan. During the period the plan is effective, in the event of disability of the depositor for more than fourteen days in any thirty-day period, the insurer pays the full amount of the monthly deposit required under the plan.

The agreement between the institution and depositor is set forth in a form of pass book proposed to be used, the first paragraph of which, preceding the numbered paragraph setting forth the terms and conditions connected with the savings plan, is quoted as follows:

"In account with

.....
(Thriftsurance Depositor-Obligor)

The aforesaid Thriftsurance Depositor-Obligor, having applied to this bank for a Thriftsurance account in the principal sum of \$....., payable in equal monthly installments of \$..... which application has been accepted by this bank subject to the following terms and conditions which the Depositor-Obligor agrees to and accepts in effecting deposits pursuant to the aforesaid Thriftsurance contract:"

Among other conditions controlling operation of the savings plan set forth in the form of pass book, paragraphs 5 and 6 thereof are quoted as follows:

"5. Any withdrawal from a Thriftsurance account or failure to make regular payments by the Depositor in a Thriftsurance account as agreed will terminate the Thriftsurance account and particularly the insurance features thereunder, pursuant to the Bank's group life and disability insurance coverage on Thriftsurance accounts in effect as set forth in the Certificate of Insurance contained in the last pages of this pass book."

"6. Where a Thriftsurance account is terminated either by withdrawals or failure of the Depositor to keep up the regular payments due thereunder, pursuant to agreement, the amount remaining on deposit at the time of such withdrawal or lapse will automatically become subject to the rules and regulations governing savings accounts in this bank."

.....

While the savings plan here discussed contemplates, as indicated above, a promise by one engaging with an institution to build up a savings account thereunder, there is not created by such promise a

debt or obligation which under any circumstance could be an asset of the institution or enforceable in law. Hence, it would seem reasonable to conclude that there could be no creditor-debtor relationship existing between a depositor and an institution under this plan which would authorize and support the type of group insurance policy contemplated by subsection 635.24 (2).

It is to be noted that the group coverage here proposed provides not only death but disability benefits. The conclusion reached in the preceding paragraph renders unnecessary a discussion of permissive group disability coverage under our laws.

In view of the foregoing, in my opinion the above question must be answered in the negative; that is to say, that the group insurance coverage proposed as a part of the savings plan set forth above is not authorized under the laws of Florida.

December 29, 1950.—050-585.

**GROUP INSURANCE—EMPLOYEES DEPENDENTS—COVERAGE
NOT AUTHORIZED SECTIONS 635.24-635.26,
FLORIDA STATUTES**

QUESTION: Properly may a group life insurance contract in this state issued in connection with the employer-employee relationship contemplated by Section 635.24 (1) Florida Statutes, provide for the payment of benefits upon death of dependents of employees?

To: Honorable J. Edwin Larson, Insurance Commissioner:

.....
..... Only the courts, in a proper proceeding, measuring the question here against the wording of the involved laws and legislative intent in the light of public welfare, can determine the matter with finality. In the absence of court construction, it is here concluded that neither the laws as they existed prior to the effective date of Chapter 25189, nor as they now exist, authorized or authorize the coverage of employees' dependents as here described.

Hence, the question is answered in the negative.

FRATERNAL BENEFIT SOCIETIES

February 9, 1949—049-49.

AMERICAN WOODMEN—EXEMPTION, CERTAIN TAXES—“CHARITABLE AND BENEVOLENT INSTITUTIONS”

QUESTION: The Supreme Camp of the American Woodmen and Teachers Protective Union, chartered under the laws of other states, have each been admitted to this State in pursuance of pertinent sections of Chapter 637, Florida Statutes, 1941, as amended. Relevant information available from the request for opinion and enclosures concerning such organizations is set forth below. Are these organizations, or either of them, entitled to exemption from those taxes described in and as contemplated by Section 637.60, Florida Statutes, 1941, as amended?

To: *Honorable J. Edwin Larson, Insurance Commissioner, Tallahassee, Florida:*

Since these organizations have been admitted to this State under provisions of Chapter 637, we assume they are fraternal benefit societies within the meaning of said chapter. Since it is not the province of this office under the circumstances found here to deal with the constitutionality of legislation, we assume the provisions of said amended section are valid. This opinion is conditioned upon such assumptions.

.....

In view of the foregoing, in my opinion the above question properly is answered as follows:

Under Section 637.60, as amended, in order for a fraternal benefit society to qualify as a "charitable and benevolent institution," and be entitled to the exemption from certain taxes, as provided in said section, in addition to the benefits it affords its members under certificates issued and the funds and reserves required for said certificates, it must (1) maintain in good faith an institution for the benefit of its members, or (2) maintain in good faith a "fund which has for its purpose the care, education or other bona fide benevolent benefits to its members." From information presently available, the status of neither of these organizations under Section 637.60, as amended, is evident. Hence, it is suggested that the Insurance Commissioner inform each of these organizations of the provisions of said section, as above construed, and afford them opportunity to evidence that they are entitled to the benefits of said section, in the light of said construction.

June 14, 1949—049-250.

**AMERICAN WOODMEN—ENTITLED EXEMPTION ONLY WHEN
EVIDENCE FURNISHED TO INSURANCE COMMISSIONER—
FUND MAINTAINED BENEFIT MEMBERS**

QUESTION: Is the Supreme Camp of the American Woodmen, a fraternal benefit society authorized to engage in business in Florida, organized for certain purposes and contributing to certain causes, the relevant ones of which are hereinafter described, exempt from the payment of those taxes contemplated by Section 637.60, Florida Statutes, as amended, as said section is construed in Attorney General's opinion No. 049-49?

To: *Honorable J. Edwin Larson, Insurance Commissioner:*

Opinion 049-49 dealt with the above fraternal benefit society in relation to the tax exemptions claimed by it under Section 637.60, Florida Statutes, as amended, and particular reference is made to such previous opinion. In the light of that opinion, it is stated that this fraternal benefit society is entitled to the tax exemptions claimed if, in addition to the benefits it affords its members under certificates issued and the funds and reserves required for said certificates, it maintains in good faith an institution for the benefit of its members or it maintains in good faith a fund which has for its purpose the "care, education or other bona fide benevolent benefits to its members".

.....

..... the information furnished this office does not affirmatively disclose that this organization actually maintains a fund which has for its purpose the care, education or other bona fide benevolent benefits to its members, required by Section 637.60 as prerequisite to the tax exemptions granted by said section. Unless the Supreme Camp of this organization can evidence to the Insurance Commissioner that it actually maintains such a fund for the payment of benefits to its members, as contemplated by Section 637.60 and as construed in opinion 049-49 and this opinion, it is not entitled to the tax exemptions provided by said section.

October 1, 1949—049-467.

**JUVENILE SCHOLARSHIP FUND—ENTITLED EXEMPTION—
§637.60, FLORIDA STATUTES**

QUESTION: Is a fraternal benefit society which, in addition to the benefits it affords its members under certificates issued to them and in addition to the reserves and funds required for such certificates, has set up a juvenile scholarship fund, and for the past twelve years has at regular intervals made grants in aid to worthy and promising members of the juvenile department of the organization, entitled to the tax exemptions described in and contemplated by Section 637.60, Florida Statutes, as amended?

To: Honorable J. Edwin Larson, Insurance Commissioner:

..... the question is answered in the affirmative.

SICK AND FUNERAL BENEFIT INSURANCE

December 29, 1950.—050-586.

**INSURANCE COMMISSIONER—SECURITIES DEPOSITED WITH—
RELEASE REQUIREMENTS UNDER §638.03, FLORIDA STATUTES**

QUESTION: In June 1950, in pursuance of an agreement, set forth below with sufficient detail, the owner (hereinafter referred to as seller) of all outstanding stock of a domestic sick and funeral benefit insurance company operating in pursuance of Chapter 638, Florida Statutes, 1949, transferred all said stock to another person (hereinafter referred to as purchaser). The deposit required by Section 638.03 at the time of such transfer had been reduced, by release of portions thereof, to the value of approximately \$7,000. Under the agreement, \$1500 in United States bonds were placed by seller in escrow with the Insurance Commissioner to insure payment of possible claims against the company, the Commissioner, at the end of a stated period, to deliver same or balance remaining, to the seller, such \$1500 in securities being acquired by the seller from the deposit as herein-after set forth. The purchaser of said corporate stock, described in the request for opinion as "now the head of" such company, has demanded that the Insurance Commissioner deliver to him such securities remaining in said deposit approximating \$5500. The Unemployment Compensation Division, Florida Industrial Commission, asserts claim for unemployment compensation taxes and interest against said company in the present total amount of \$3426.29, and has made demand upon the Commissioner that such claim be paid from the

securities in said deposit now held by him. The attorney for the seller of said stock has orally notified the Insurance Commissioner not to deliver to the purchaser said deposit of \$5500 until the question of such unemployment compensation taxes has been settled. What disposition, if any, should now be made by the Insurance Commissioner with respect to the approximately \$5500 in securities so held by him?

To: Honorable J. Edwin Larson, Insurance Commissioner:

..... the above question properly is answered as follows:

(1) The securities constituting a deposit under Section 638.03 are by law held by the Insurance Commissioner in trust for the protection of lawful claims of policyholders. The position of this office is that, in the absence of statute prescribing a procedure to determine if any outstanding claims exist which might be asserted against this trust when release of such securities is sought, caution dictates that the Insurance Commissioner should not deliver said securities constituting this trust until the lapse of three years from and after the date this insurance company has obtained an order dissolving it in pursuance of the procedure set forth for the dissolution of corporations in Chapter 612, Florida Statutes, 1949.

(2) An examination of the Commissioner's file which accompanied the request for opinion indicates that he has satisfied himself and determined there is no possibility of a claim being asserted against this deposit in his hands. Assuming that we have correctly interpreted the acts and doings of this insurance company and the determination of the Insurance Commissioner with respect to this trust, then it would seem that the remainder of the securities constituting said trust may be delivered to this insurance company.

(3) This property in the hands of the Insurance Commissioner is not subject to legal process to effect collection of delinquent unemployment compensation taxes. Nevertheless, in view of the apparent claims of the Unemployment Compensation Division, the demands of the attorney for the seller of the stock involved, and the demands of the attorney for the purchaser of said stock, all as set forth above, prior to any action by the Insurance Commission with respect to this property, it is suggested that he notify those interested parties in order that they or any of them, if they elect, may have the opportunity of instituting appropriate proceedings for declaratory decree to have determined the duty of the Insurance Commissioner with respect to the property involved.

BENEVOLENT MUTUAL BENEFIT ASSOCIATIONS

November 29, 1949—049-568.

FLORIDA MUTUAL LIFE INSURANCE CO.—WESTLAND LIFE INSURANCE CO.—RE-INSURANCE—PROPOSED AGREEMENT—APPROVAL BY INSURANCE COMMISSIONER

QUESTION: A proposed agreement between Florida Mutual Life Insurance Company, a Florida corporation (hereinafter referred to as "Florida Mutual") and Westland Life Insurance Company, a California

corporation (hereinafter referred to as "Westland Life"), provides in detail for assumption by the latter of policies of insurance issued or assumed by the former in force and effect as of the effective date of the proposed contract. Filed with this opinion is a copy of such proposed agreement. Only certain provisions of the agreement are here discussed. The proposed agreement has been submitted to the Insurance Commissioner for his approval. Should the Insurance Commissioner approve the proposed agreement?

To: Honorable J. Edwin Larson, Insurance Commissioner:

.....

In the light of the foregoing, the above question is answered as follows:

It is recommended that the Insurance Commissioner may approve the proposed reinsurance agreement, as it is now prepared, subject to the following conditions:

(1) Prior approval of said agreement by the policyholders of Florida Mutual, as contemplated by paragraph 5 of the agreement.

(2) The agreement to provide that prior to disbursement to Florida Mutual policyholders by the Commissioner of the proceeds of the assets remaining in his hands, as provided by the agreement, such be done only in pursuance of a declaratory decree entered in a proper proceeding; that in any event, such distribution by the Commissioner shall be in accord with any such decree entered.

(3) To avoid any uncertainty, prior to approval by the Commissioner of the provision for distribution of such assets to Florida Mutual policyholders, he should satisfy himself that no part thereof is needed for payment of possible claims against Florida Mutual; i.e. that Westland Life's agreement to pay any possible claim against Florida Mutual after distribution of such fund is adequate.

January 11, 1950—050-20.

See: Opinion No. 049-568

**INSURANCE COMMISSIONER—PROPOSED REINSURANCE AGREEMENT—"FLORIDA MUTUAL"—"WESTLAND LIFE"—
NO AUTHORITY TO APPROVE**

QUESTION: A proposed agreement between Florida Mutual Life Insurance Company, a Florida corporation, (hereinafter referred to as "Florida Mutual") and Westland Life Insurance Company, a California corporation, (hereinafter referred to as "Westland Life") provides for assumption by the latter of insurance policies issued or assumed by the former in full force and effect as of the effective date of the contract, copy of such contract being attached to the request for opinion. Certain relevant features of the proposed contract are discussed below. Is the Insurance Commissioner authorized under the laws of Florida to approve the proposed agreement?

To: Honorable J. Edwin Larson, Insurance Commissioner:

.....

In my opinion, the above question properly is answered as follows:

The Insurance Commissioner should not approve said agreement; and such advice is given for the reasons and subject to the conditions set forth below:

.....

July 31, 1949—049-351.

**FLORIDA HOSPITAL SERVICE CORPORATION—CONTRIBUTION
OR INVESTMENT OF FUNDS—STOCK INSURANCE
COMPANY**

QUESTION: Florida Hospital Service Corporation was organized and operates in pursuance of Chapter 641, Florida Statutes, and it and its functions are referred to at times as a "Blue Cross Plan." The organization desires to make a contribution of \$5000 from its reserves for contingencies, along with other Blue Cross Plans in the United States, to "Blue Cross Association," a non-profit corporation under Illinois law, the association to use said contributions to organize a stock insurance company to engage in the business of health and accident insurance. Until the amounts so contributed to the association have been paid from dividends of the insurance company, all stock of the company other than directors' qualifying shares will be held by the association and all dividends of the company will be paid to it. Is Florida Hospital Service Corporation authorized to advance \$5000 of its funds to the aforesaid association for the purpose and under the circumstances stated?

To: Honorable J. Edwin Larson, Insurance Commissioner:

.....

..... the question is answered in the negative.

It is remarked, however, that only the courts can settle this question with finality. It appears that the question might be placed before the courts in a properly instituted proceeding for declaratory decree.

HOSPITAL SERVICE PLANS

June 2, 1950—050-264.

**THIS OPINION WRITTEN IN LIEU OF OPINION 049-351
FLORIDA HOSPITAL SERVICE PLAN CORPORATION—BLUE
CROSS—STOCK INSURANCE COMPANY—FUNDS—
CONTRIBUTIONS—INVESTMENTS**

QUESTION: Is Florida Hospital Service Corporation, organized under Chapter 641, Florida Statutes, authorized to advance \$5000 from its reserves for contingencies to Blue Cross Association, a non-profit corporation under Illinois law, for the purposes and under the circumstances set forth below in this opinion?

To: Honorable Edwin Larson, Insurance Commissioner:

.....

In view of the foregoing, in my opinion the above question properly is answered as follows:

The contribution of \$5000 contemplated by the question to be made by Florida Blue Cross to the Association, is not an investment

of corporate funds within the meaning of Section 641.09 but constitutes the lawful expenditure of funds of the corporation within the reasonable meaning and intent of the powers thereof as expressed in the above quoted portion of amended Article II of its charter. The foregoing statement is made subject to the following assumptions and conditions:

(1) It is assumed that the payment of \$5000 by Florida Blue Cross from its contingency fund will not reduce such fund below any possible requirements of applicable law or of the Insurance Commissioner with respect to available funds of the corporation.

(2) It is noted in the quoted portion of Article II, Section 1, of the by-laws of the Association, that the hospital care plans eligible to contribute to the Association are those plans which are active institutional members, Type IV, of the American Hospital Association. It is assumed that the Florida Blue Cross is such a described plan.

(3) It is assumed that the articles of incorporation of the Blue Cross Association and that the provisions of the by-laws of such Association comply in full with the laws of the State of Illinois relating to the organization of non-profit corporations. It is further assumed that the rather unique provisions of the by-laws of the Association whereby the contributing plans, until contributions made by them have been repaid, control election of the directors of the National Agency and have voice in other business matters of such corporation, are in conformity with the laws of the State of Illinois and/or such other State in which the National Agency has been or may be incorporated. It is accepted without question that the attorneys for Florida Blue Cross will satisfy themselves of the legal propriety of these features pertaining to such corporations before any contribution will be made.

This opinion is substituted in lieu of former opinion of this office directed to the above official, dated July 15, 1949, No. 049-351.

ACCIDENT AND SICKNESS INSURANCE

January 7, 1949—049-6.

ELIGIBILITY OF TAMPA MOTOR CLUB

QUESTION: May group accident insurance, as contemplated by Section 642.04, Florida Statutes, 1941, as amended, be issued covering the members of Tampa Motor Club, a nonprofit corporation functioning under a charter and bylaws, and organized for purposes set forth below herein?

To: Honorable J. Edwin Larson, Insurance Commissioner:

.....

In view of the foregoing, in my opinion the above question properly is answered as follows:

It reasonably appears that Tampa Motor Club is a bona fide association, with constitution and bylaws, organized and maintained in good faith for purposes other than that of obtaining insurance, as

contemplated by Section 642.04 (2). It is assumed that it has far in excess of the minimum twenty-five members required by the section. If all members of this organization are declared eligible and acceptable to the company for the group accident insurance proposed, and that at least sixty per cent of such members are proposed to be so insured, subject to such stated assumption and conditions, the above question is answered in the affirmative.

October 12, 1949—049-488.

**INSURANCE CONTRACTS—CHIROPRACTORS—NATUROPATHS—
OSTEOPATHS—QUALIFIED AS PHYSICIAN, SURGEON**

QUESTION: An insurance policy provides, among other things, that the insurer will pay certain benefits to the insured when medical "services and materials are furnished at the direction of or under the supervision of a licensed physician or surgeon . . ." An insured under such policy was confined to a chiropractic hospital and was under the supervision of a chiropractor; and when claim was filed by the insured, liability was denied by the insurer on the ground that a chiropractor is not a "physician or surgeon" within the meaning of such words as they are used in the policy.

When such quoted words are used in a policy of insurance do they include (1) naturopaths; (2) chiropractors; and (3) osteopaths?

To: Honorable J. Edwin Larson, Insurance Commissioner:

.....

A question similar to this involving services rendered by a chiropractor was submitted to my predecessor in office. In response thereto, on May 8, 1946, an opinion was issued, No. 046-195, copy of which is hereto attached. I consider the response to the question found in that opinion, dealing solely with chiropractors in relation to such contract term, is a proper response to this question involving also naturopaths and osteopaths.

January 5, 1950—050-15.

**GROUP LIFE—GROUP HEALTH—ACCIDENT INSURANCE—MUNI-
CIPALITY—COUNTY OFFICES—ASSOCIATION—EM-
PLOYEES—§§112.08-112.14, F. S. '41—CHAPTER
642—APPLICABLE**

QUESTIONS: 1. Is an insurance company doing business in this state authorized to issue to a municipal corporation a group life policy covering its employees, where the plan is a voluntary one and the entire premium is to be paid by deductions from salaries or wages of the participating employees?

2. Is an insurance company doing business in this state authorized to issue to a county board of public instruction a group life policy covering its employees, where the plan is a voluntary one and the entire premium is to be paid by deductions from salaries or wages of the participating employees?

3. Is an insurance company doing business in this state authorized to issue to a municipal corporation a group health and accident policy

covering its employees, where the plan is a voluntary one and the entire premium is to be paid by deductions from the salaries or wages of the participating employees?

4. Is an insurance company doing business in this state authorized to issue a group health and accident policy including therein a natural death benefit to members of an association that complies with the requirements of Section 4 B, Chapter 24087, Acts of 1947 (Section 642.04(2), Florida Statutes)?

To: Honorable J. Edwin Larson, Insurance Commissioner:

It is to be noted that certain of the above questions apply to municipal corporations. Possible charter provisions of municipalities providing for group insurance of various types for the employees thereof are excepted from the effects of this opinion.

Your questions are answered in their numbered order as follows:

(1) This question is answered in the affirmative, subject to the following: (1) that the provisions of Sections 112.08-112.14 shall be met; and (2) that any policy issued shall meet the policy requirements set forth in Section 2, Chapter 25189.

(2) this question is answered in the affirmative, subject to the following: (1) that the provisions of Sections 112.08-112.14 shall be met; and (2) that any policy issued shall meet the policy requirements set forth in Section 2, Chapter 25189.

(3) Subject to the foregoing comments, this question is answered in the affirmative, and it is to be noted that the answer as given applies with equal force to the employees of a county.

(4) Hence, it would seem that such an association and such public employees may obtain group accident and sickness insurance providing natural death benefits to the insureds not to exceed two hundred fifty dollars. If the members of any labor union, which is an association as defined in subsection 642.04(2), desire greater natural death benefits than those mentioned, they may obtain same through a group life policy issued in full conformity with the requirements of Chapter 25189. If such public employees desire insurance providing greater natural death benefits, such may be obtained through group life insurance coverage issued under the circumstances and as conditioned in the above answers to questions (1) and (2).

April 25, 1950—050-218.

See: Opinion No. 050-15

FLORIDA INDUSTRIAL COMMISSION—EMPLOYEES—GROUP INSURANCE—PREMIUMS—NO AUTHORITY FOR PAYMENT WITH STATE FUNDS

QUESTION: May the Florida Industrial Commission provide for group insurance including life, disability and sickness income, hospitalization and surgical, to those employees who desire the same by paying a part of the premiums required therefor out of state funds?

To: *Honorable Raymond E. Barnes, Chairman, Florida Industrial Commission:*

.....

In view of the foregoing, in my opinion the above question is answered in the negative; that is to say, that the premium for such group life and group accident and sickness insurance furnished covering the employees of the Florida Industrial Commission is to be derived solely by deductions from the wages or salaries of the insured employees. There appears to be no authority under this law for any part of such premium to be paid from funds appropriated for use of the commission.

SURETIES AND SURETY COMPANIES

August 18, 1950—050-404—050-352.

F.I.C. BONDS—NOT ACCEPTABLE AS DEPOSITS UNDER §631.06, 648.02, FLORIDA STATUTES

QUESTION: Are Florida State Improvement Commission, Series 18, Palm Beach County, 3¾% bonds, maturing 10/1/59, optional 10/1/58, acceptable as a deposit of bonds under either Sections 631.06 or 648.02, Florida Statutes, 1949?

To: *Honorable J. Edwin Larson, Insurance Commissioner:*

.....

In view of the foregoing, in my opinion the above question is answered as follows:

The bonds described in the above question properly may not be accepted as deposit by the Insurance Commissioner in pursuance of either Section 631.06 or Section 648.02. Hence, the question is answered in the negative.

It is remarked that the sufficiency of the other securities proposed to be deposited with the Insurance Commissioner in pursuance of Sections 631.06 and 648.02 is not dealt with in this opinion.

CHAPTER XXXIV

BANKS AND BANKING

BANKS; INCORPORATION, ORGANIZATION AND POWERS

July 2, 1949—049-292.

STATE BANK—"DRIVE-IN" DEPOSITORY—NO VIOLATION OF— FLORIDA STATUTES

QUESTION: Would the operation of a "drive-in" depository across an alley from the main banking building of a state bank violate Florida Statutes relating to branch banking?

To: C. M. Gay, State Comptroller:

.....

Since the proposed "drive-in" depository will be used solely as a depository and not for the purpose of carrying on general banking business, it is my opinion that the establishment of such depository would not in any way violate the Florida statutes relating to branch banking.

July 11, 1949

Honorable C. M. Gay
State Comptroller
Tallahassee, Florida

Re: State bank operating "drive in"
depository near its banking house

Dear Mr. Gay:

It has been brought to my attention that opinion number 049-292, rendered by this office on July 2, 1949, relating to "drive in" depositories located in or near banking institutions of this State may, upon a casual reading, be given too broad an application. An opinion of this office, like an opinion of a court, should and must be construed in the light of the facts and circumstances upon which based.

The drive in depository involved and upon which the said opinion is based is, or will be, located on bank property adjacent to the parcel of land upon which the banking house is located although across an alley, and is or will be actually connected with the said banking house by either a tunnel under the said alley or by an overhead passage constructed over the said alley. The depository is so connected with the banking house and so located as for all intents and purposes to be a part thereof. It is so located with relation to the bank vaults as to permit the immediate transfer of funds deposited into the said vaults. The said opinion should not be held or considered as authorizing any depository not within the above factual situation.

Under Section 653.35, Florida Statutes Annotated, it lies within your power to make reasonable rules and regulations governing the

conduct of State banks and you are authorized to make such rules regarding "drive in" depositories within statutory limits.

The opinion was a correct statement of the law as applied to the above facts and circumstances, but should not be applied to a different factual set up.

Very truly yours,

Richard W. Ervin
Attorney General

August 25, 1950—050-430—049-547.

**FLORIDA REAL ESTATE MORTGAGES—NEW YORK SAVINGS
BANKS—INVESTMENTS**

QUESTION: Certain savings banks organized and existing under the laws of the State of New York contemplate making investments in mortgages covering Florida real estate, which mortgages are guaranteed by the government through F. H. A. or the V. A. If such mortgages are purchased it might be that certain of them would have to be foreclosed in Florida courts, title to mortgaged property bought in at foreclosure sales, and title held until such time as the properties were disposed of. Also there would be entailed the necessity of the care and custody of the properties in question while so owned by the savings banks as a result of the purchase thereof at foreclosure sales. Assuming that the activities described above were determined to be in violation of Section 652.25, Florida Statutes, 1949, prohibiting a foreign bank from doing a banking business in Florida, what would be the consequence of such action by the New York savings banks in so far as their mortgages purchased by them are concerned, including not only the question of the effect on the ownership of the mortgages, but also the question of the right of the banks to foreclose the mortgages and engaging in the other activities consequent upon foreclosure and mentioned above?

To: Rogers, Towers & Bailey, Attorneys at Law, Jacksonville, Fla:

.....

In view of the foregoing, in my opinion the question as limited above may be answered as follows:

(1) If the savings banks acquire these Florida insured mortgages in pursuance of transactions consummated in New York, such would not offend any statute of this state.

(2) The banks impliedly have the right to take all necessary steps in this state, including recourse to the courts, to enforce collection of such mortgages so lawfully acquired by them.

(3) Nevertheless, only the courts in proper proceedings can settle this question with finality. Should interested parties desire to resort to a declaratory judgment proceeding to obtain a judicial determination of the issue presented, this office will cooperate fully to expedite the matter.

TRUST COMPANIES

May 30, 1949—049-238.

**FOREIGN CORPORATION—CENTRAL TRUST OF CHINA NOT
QUALIFIED TO DO INSURANCE BUSINESS THIS STATE**

QUESTION: May a foreign governmental corporation organize for the purpose of doing trust, insurance, savings, and other businesses, containing the word "trust" in its corporate name, be qualified as a foreign corporation to do an insurance business in this state?

To: Honorable R. A. Gray, Secretary of State:

.....

..... Doubtless the agency of the National Government of China in question should be classified as a proprietary function of such government and not as one of its governmental functions. This being true, in the absence of some treaty or agreement providing otherwise, I am of the opinion that Section 655.01, Florida Statutes, should be applicable, and that the above question should be answered in the negative conditioned upon amendment should a treaty or other agreement in this connection be shown.

CHAPTER XXXV
BUILDING AND LOAN ASSOCIATIONS
INCORPORATION AND OPERATION OF DOMESTIC
BUILDING AND LOAN ASSOCIATIONS

December 27, 1950.—050-580.

**FOREIGN CORPORATIONS—WORD "SAVINGS"—RESTRICTIONS
DO NOT APPLY TO—§665.02, FLORIDA STATUTES**

QUESTION: In view of the provisions of Section 665.02, Florida Statutes, does the word "savings" in the title of the Mutual Savings Life Insurance Company, of Decatur, Alabama, preclude the company from being permitted to do business in this state, if otherwise qualified?

To: Honorable J. Edwin Larson, Insurance Commissioner:

..... There is nothing in the insurance laws (Chapter 625, Florida Statutes et seq.) pertaining to the obtaining of a certificate of authority by a foreign insurance company to do business in this state which makes any regulation as to restricted words in the name of the company. Nor is there anything to that effect in the laws relative to foreign corporations generally (Chapter 613, Florida Statutes). Hence, since the only reference to the restriction on the use of the word "savings" is contained in Section 665.02, Florida Statutes, which appears to relate only to domestic corporations organized under the laws of this state, I am constrained to hold that the restrictions do not apply to foreign corporations.

Accordingly, it is my opinion that your question should be answered in the negative.

CHAPTER XXXVI COMMERCIAL RELATIONS

NEGOTIABLE INSTRUMENTS; FORM AND INTERPRETATION, ETC.

June 27, 1950—050-318.

COURT REGISTRY DRAFT—NONNEGOTIABLE—ORIGINAL LOST
—DUPLICATE—PROCEDURE FOR ISSUANCE— §§674.02,
674.04, FLORIDA STATUTES

QUESTION: Where a proper court registry draft, signed by a judge and clerk of a circuit court, was issued and mailed to a certain individual pursuant to proper court order, and this draft has never been returned or cashed, what is the procedure to be followed for the issuance of a duplicate draft in lieu of the one purported to be lost and what requirements should be made by the State Treasurer before authorizing the clerk to issue a duplicate draft?

To: Honorable J. Edwin Larson, State Treasurer:

.....
Your attention is invited to former opinion number 042-53, copy of which is attached, wherein this same question was presented. There the holding was to the effect that the provisions of Section 17.13, Florida Statutes, represents a satisfactory method of issuing duplicate court registry drafts although said section is only applicable specifically to lost or destroyed comptroller's warrants. At the time of that opinion, a bond was required "to indemnify the State of Florida and any innocent holders thereof from any damages that may accrue from such duplicate." In 1947 the aforesaid section was amended to allow such a bond "if the Comptroller deems it necessary."

While the procedure as outlined in Section 17.13, Florida Statutes, and former opinion numbered 042-53 may well be followed by the judge and clerk in issuing a duplicate court registry draft or check, it appears that such procedure is within their discretion.

..... it is submitted that the following procedure could be followed in the issuance of a duplicate court registry draft, under the circumstances as presented here:

1. The court should require a sworn statement reciting the number, date of issuance, amount of the court registry draft, and circumstances of its loss or non-receipt.
2. Upon such proof showing the draft has never been received, returned or cashed, the court should issue an order to the State Treasurer directing him to stop payment on the original draft, indicating the number thereof.
3. The court should then issue a duplicate draft showing the same number as the original and plainly marking the same as a duplicate. It might be wise to mail such duplicate by registered mail requesting a signed receipt be returned.

Either of the above procedures could be followed in this case, but it is felt that the second method outlined would be preferable due to the particular circumstances shown here. The foregoing observations appear to answer the questions you have presented.

CHAPTER XXXVII

REAL AND PERSONAL PROPERTY

RECORDS OF CONVEYANCE OF REAL ESTATE

February 24, 1949—049-75.

CLERKS CIRCUIT COURT—INSTRUMENTS—ACKNOWLEDGED— ENTITLED TO RECORD

QUESTIONS: 1. Should the Clerk record a deed purporting to convey real estate having but one witness?

2. If a deed is recorded with only one witness, would the same be subject to being contested?

3. Should all instruments with the exception of chattel mortgages bear two witnesses and be properly acknowledged before the same are entitled to record?

4. Is it compulsory for the Clerk to refuse papers that are not properly executed for record, even if the person that presents same for record requests that it be recorded regardless?

To: *Miss Thelma Lewis, Clerk Circuit Court, Hamilton County, Jasper, Florida:*

..... the recording statute, Section 695.03, is not concerned with the validity of the document and requires only that it be acknowledged. Therefore, it is your duty to record such instrument when duly acknowledged regardless of whether or not it has any witnesses. As to whether or not a recorded instrument which bore only one witness would be subject to being contested, I wish to point out that this would be a matter between the parties to the instrument and does not involve any duty of your office.

ASSIGNMENT AND CANCELLATION OF MORTGAGES

February 11, 1949—049-54.

CLERKS OF CIRCUIT COURTS ATTESTATION DOES NOT IN- CLUDE SEAL IN MORTGAGES, MARGINAL SATISFAC- TION—PRELIMINARY HEARING—DEFENDANT DISCHARGED—MAGISTRATE EN- TITLED TO COSTS

QUESTIONS: 1. (a) Where the clerk of the circuit court attests the signature of a mortgagee, when said mortgagee executes a marginal satisfaction, should the clerk's seal be affixed?

(b) What would the clerk be justified in charging?

2. What are the undesirable aspects of the "marginal satisfaction" as a method of satisfying a mortgage on real estate?

3. What charges, if any, is a committing magistrate entitled to present to the county commissioners for payment, when the case is dismissed by said committing magistrate? What effect would the absence of a deposit for costs, by the signer of the affidavit, have?

To: Honorable Stanley C. Burnside, Clerk of Circuit Court, Pasco County, Dade City, Florida:

1. (a) Section 701.04 provides for the marginal satisfaction of a mortgage and requires that the marginal satisfaction "be attested by said custodian." The custodian is the clerk of the circuit court. In my opinion, the requirement of attestation does not include the clerk's seal. (b) I concur in the earlier holding of my predecessors that the charge for this attestation is twenty-five cents.

2. I cannot give you an official answer to your second question because both methods of satisfaction are lawful and effective. One is as valid as the other.

3. Your third question was answered by the case of *Barrow vs. State*, 77 Fla. 776, 82 So. 294. The case as reported does not give all the facts, but investigation of the record in the Supreme Court discloses that in that case the magistrate discharged the defendant after preliminary hearing. The court held that the magistrate was entitled to his costs.

As to the effect of the absence of a deposit for costs, the Supreme Court in *Simmons vs. State*, 71 So. 278, said that the requirement for collection of costs did not apply to crimes of a public nature; and I presume that crimes of a public nature covers practically all crimes.

CHAPTER XXXVIII

ESTATES OF DECEDENTS

MISCELLANEOUS PROBATE PROVISIONS

May 20, 1949—049-228.

INSTRUMENTS—TRANSCRIPTS—WILL—CODICILS—ORDERS —FILING—RECORDING

QUESTION: What instruments required or referred to in Section 736.06, Florida Statutes, are required or should be actually recorded in the court minutes and which of such instruments, if any, may be filed instead of being recorded?

To: *Honorable Hiram W. Bryant, County Judge, Fort Myers, Florida:*

.....

In the light of the above observations I am of the opinion that the legislature at least intended that the will and its codicils and the order of the foreign court admitting it to record should be recorded. The order of the Florida court admitting the transcript to record in this state doubtless should be entered by recording. The statutes do not seem to require that the transcript contain a copy of any order of discharge; however, I feel that the inclusion of such instrument when available would be advisable.

Transcripts under Section 736.06, Florida Statutes, are probably admitted to record in this state for the benefit of the devisees and those claiming under them, as muniments of title, and not for the benefit of the people of the state. The said entry of record being for the benefit of the said devisees and those claiming under them, it would seem that they should have some voice in what instruments are to be actually recorded and what instruments are to be filed in the office. I, therefore, feel that the county judge should adopt the rule of recording such of the instruments as he may be directed to record, which evidently should include the will and its codicils, the order of the foreign court admitting the same to probate, and the order of the court in this state admitting the transcript to record. These observations seem to answer your question.

CHAPTER XXXIX

DOMESTIC RELATIONS

HUSBAND AND WIFE

January 15, 1949—049-12.

LICENSE TO MARRY—CONSENT OF PARENT GUARDIAN—MINOR —NATIVE OF GERMANY

QUESTION: As County Judge, do I have the authority to issue a license to a German girl, 19 years of age, whose passport shows that it was issued for the purpose of permitting a young lady (Miss Frieda Springer) to come from Germany to the United States to marry a young man by the name of Hurschell Musgrove, the application being accompanied and supported by a declaration in German showing the following: that the young lady living as a daughter in Lager Street, in Puchheim; the father, Adolf Springer, is the legally constituted guardian appointed by the court, who lives in Lager Street, Puchheim, was shown by a card issued by the government and accompanied by an affidavit taken before one, Johann Dresley, a notary public, showing that Frieda Springer is engaged to marry an American citizen, Hurschell Musgrove, who lives at 103 West Gladys Street, Tampa 3, Florida, and she intends to journey to the United States as soon as possible and swears to marry this man within three months after her arrival. The affidavit contains: "I, the father and the legally appointed guardian give my consent." The affidavit is subscribed and sworn to before me, the notary public in Munich and is signed by Frieda Springer, Adolf Springer and is certified to be a true and correct copy bearing a seal. It further appears that the young man, Mr. Musgrove has deposited \$500.00 as a penalty and is anxious to avoid losing the penalty for failure to marry the young lady within the limited time. The young lady arrived in this state December 29, 1948?

To: Honorable William C. Brooker, County Judge, Hillsborough County, Tampa 2, Florida:

It is my opinion that under the circumstances as set forth in your letter of January 12, 1949, that the license should be issued. It appearing that the father and legally constituted guardian appointed by the court consents thereto, and provided that the other conditions prescribed by the statutes are complied with.

January 20, 1949—049-21.

PROXY MARRIAGES—TRANS-PACIFIC TELEPHONE CEREMONY— VALIDITY

QUESTION: Where license has been duly issued, may a justice of the peace lawfully perform a marriage ceremony between a party residing in his county and a party in Japan, (a) where the bridegroom is represented by proxy, or (b) by trans-Pacific telephone?

To: Hon. Ollie Lancaster, Jr., Justice of the Peace, District 12, Daytona Beach, Volusia County, Florida:

It is my opinion that the so-called proxy marriage is not valid when performed in this state. I cannot advise you as to the validity of what you term a trans-pacific telephone ceremony. It will be necessary that I have full, detailed account of just how such telephone marriage will be performed. If you will give me such detailed information, I shall give you an opinion.

February 5, 1949—049-45.

MARRIAGE—TRANS-PACIFIC TELEPHONE—INVALID

QUESTION: Where Florida license has been duly issued to citizens of the United States, may a justice of the peace lawfully perform a marriage ceremony between the licensed parties, one being in Daytona Beach, Florida, and the other being in Tokyo, Japan, by trans-Pacific or long distance telephone?

To: Honorable Ollie Lancaster, Jr., Justice of the Peace, District 12, Daytona Beach, Florida:

After much consideration of the question, I am of the opinion that such a marriage would not be valid if construed under our law.

March 22, 1949—049-122.

MINORS—MARRIAGE LICENSE—PARENTS INCOMPETENT OR DIVORCED

QUESTIONS: 1. I have been requested to issue a marriage license for minors. The boy is eighteen years of age. His mother is living and can sign the written consent, but his father is incompetent. Is the statutory written consent required of the father under such circumstances?

2. The girl is sixteen years of age. Her father and mother have been divorced and the girl is in the custody of the father. Is the statutory written consent of the mother required under such circumstances?

To: Honorable Joe Trotman, County Judge, DeFuniak Springs, Walton County, Florida:

In reply to your first question, I wish to state that in the event the incompetency of the father has been duly adjudicated, his written consent would not be required.

In reply to your second question, I wish to state that if the decree of divorce awards the girl to the custody of the father, the written consent of the mother is not required.

March 29, 1949—049-130.

DIVORCE—INSANITY NOT GROUNDS FOR

QUESTION: Can a person mentioned divorce his wife who has been in the state hospital in Chattahoochee for the last ten years and still shows no sign of improvement?

To: *Honorable T. C. Merchant, Jr., Madison, Florida:*

. your inquiry must be answered in the negative.

April 28, 1949—049-183.

MINISTERS—JUDICIAL OFFICERS—NOTARIES PUBLIC—AUTHORITY FOR PERFORMANCE MARRIAGE CEREMONIES

QUESTIONS: 1. Under Florida law what officials are authorized to solemnize the rites of matrimony?

2. Under the provisions of Section 117.04, Florida Statutes, 1941, may Notaries Public still solemnize matrimony?

To: *Honorable Sam D. May, County Judge, Washington County, Chipley, Florida:*

In reply to your first question, I wish to state that Section 741.07 is the section defining the right to solemnize matrimony. . . .

In reply to your second question, I wish to state that there has been no amendment to Section 117.04, and that a Notary Public may solemnize marriage.

August 15, 1949—049-379.

MARRIAGE CEREMONY—LICENSED OR "REGULARLY ORDAINED" MINISTER—AUTHORIZED TO PERFORM

QUESTION: Whether or not a *licensed* minister of the gospel in the Methodist Church, who is authorized by his district superintendent and Bishop to perform the marriage ceremony, is to be considered a regularly ordained minister of the Gospel, as referred to in Section 741.07, Florida Statutes?

To: *Honorable William C. Brooker, County Judge, Hillsborough County, Tampa, Florida:*

.
. it is my opinion that the Legislature of the State of Florida intended the words "regularly ordained" in the statute to include those ministers who have been recognized in the manner required by the regulations of their respective denominations to perform marriage ceremonies.

The question, therefore, is answered in the affirmative.

October 24, 1949—049-507.

MARRIAGE CEREMONY—TEN-YEAR OLD WITNESS—COMPETENCY—DETERMINATION BY COURT

QUESTION: Please inform me if a ten-year old witness to a marriage is permitted under our statutes?

To: *Honorable O. Frank Scofield, County Judge, Citrus County, Inverness, Florida:*

.
. if under all the circumstances in the case the court considers a ten-year old child competent, his testimony may be received, otherwise not.

December 5, 1949—049-578.

COUNTY JUDGES—PROXY MARRIAGE—LICENSE—ISSUANCE—
VALIDITY

QUESTION: May a county judge issue a marriage license for a proxy marriage?

To: *Honorable W. F. Blanton, County Judge's Court, Miami, Florida:*

..... I think he should issue the license when the parties have otherwise qualified unless he knows with absolute certainty that it will be used for any kind of invalid marriage, which would include the so-called proxy marriage.

February 22, 1950—050-89. See: Opinion No. 049-379.

SALVATION ARMY OFFICER—AUTHORITY TO MARRY OTHERS
—MARRIAGE CEREMONY—CHAP. 741, F.S. '41

QUESTION: Do officials of the Salvation Army have legal authority to solemnize the rights of the matrimonial contract?

To: *Honorable William C. Brooker, County Judge, Hillsborough County:*

Your question is substantially answered in my earlier opinion to you dated August 15, 1949, Number 049-379.

..... It is my opinion that an official of the Salvation Army, who devotes himself generally to the work of officiating and ministering in the religious interests and affairs of the Salvation Army and whose official capacity has been recognized in the manner required by the prescribed regulations of the Salvation Army has the legal authority to solemnize the rights of the matrimonial contract.

March 21, 1950—050-136.

COUNTY JUDGES—MARRIAGE LICENSE APPLICATION—IMPEDI-
MENT—REMOVAL REQUIRED—CHAPTER 741, FLORIDA
STATUTES APPLICABLE

QUESTION: May a county judge accept an application for marriage while an impediment is known to exist provided said judge does not issue a marriage license until after the removal of said impediment?

To: *Honorable William C. Brooker, County Judge, Hillsborough County, Tampa, Florida:*

..... In view of the above, it is my opinion that a county judge may accept an application for marriage even though at the time of filing such application an impediment exists to a valid marriage *PROVIDED* said judge accepting said application shall not issue a marriage license until after said impediment has been removed.

June 13, 1950—050-289.

MARRIAGE LICENSE—APPLICATION—ACKNOWLEDGMENT—
COMMISSIONED NAVAL OFFICER—AUTHORIZED—
RESTRICTIONS

QUESTION: Is a commissioned naval officer authorized by law to administer oath and take affidavit of applicant for marriage license?

*To: Honorable William C. Brooker, County Judge, Hillsborough County,
Tampa, Florida:*

.

Reference is made to Section 695.031, Florida Statutes, dealing with affidavits and acknowledgments by members of the armed forces.

. it is my opinion that if a party to the marriage application is serving in or with the armed forces of the United States, as provided by the above statute, then an acknowledgment of affidavit for marriage certificate made by said party before a commissioned naval officer is valid and should be accepted by the County Judge.

Therefore, your question is answered in the affirmative subjective to the above restriction.

CHAPTER XL

CRIMES

DEFINITIONS; GENERAL PENALTY PROVISIONS

December 11, 1950.—050-555.

MOTOR VEHICLES—DRUNKEN DRIVING WITHOUT LICENSE —TWO CHARGES—SAME TRANSACTION

QUESTION: Can a man be guilty of two charges at the same time, such as "operating a motor vehicle while under the influence of intoxicating liquor to such an extent as to affect his normal faculties to the point of impairment" and also "operating a motor vehicle without having first obtained a valid license to do so"?

To: *Honorable A. C. Simmons, County Prosecuting Attorney, Fort Pierce, Florida:*

.....
..... a man may be guilty of both of said offenses, whether they grow out of the same act of operating an automobile or not.

WEAPONS AND FIREARMS

September 27, 1949—049-459.

CONSERVATORS OF PEACE—WEAPONS AND FIREARMS— SEARCHES AND SEIZURES—POWERS—DUTIES— OBLIGATIONS

QUESTIONS: 1. Has a justice of the peace authority in this state to carry firearms in his own district?

2. Has a deputy sheriff, not on active duty, the right to carry firearms?

3. May a justice of the peace appoint an acting constable where none has been elected for his district?

4. May a conservation agent of the game and fresh water fish commission, in the performance of his duties, go upon "posted" property?

5. When and where has a conservation agent of the game and fresh water fish commission authority to stop and search an automobile?

To: *Honorable C. M. Pearson, Justice of the Peace, Inglis, Florida:*

..... the first question is answered by stating that justices of the peace in this state are not permitted by law to carry concealed weapons such as firearms. Their right to carry arms is the same as any other citizen. Deputy sheriffs are probably only permitted by law to carry concealed weapons in the state while on active duty. When a deputy sheriff is on active duty is a question of fact to be determined

from the circumstances in each case, and, due to the nature of his duties as a law enforcement officer, there is necessarily an extremely wide latitude allowed in the determination of this question. These observations seem to answer the first and second questions.

..... This authority is given justice of the peace under Section 37.16, Florida Statutes; however, as the executive officer of a justice of the peace court may be either the constable of the justice district or the sheriff of the county, such court would not be without available executive officer so long as there was either a constable of the district or sheriff for the county. When there has been no constable elected for a justice district the sheriff would be the executive officer for the justice of the peace court. Where there is a vacancy in the office of constable such office should be filled by appointment by the governor and not by the justice of the peace (see Section 7, Article IV, and Section 23, Article V, State Constitution). These observations seem to answer the third question.

Section 372.07, Florida Statutes, authorizes the conservation officers of the game and fresh water fish commission "to go upon all premises, posted or otherwise." This authority naturally presupposes that such going upon posted lands will be in connection with the enforcement of the state game and fresh water fish laws and rules and regulations. These observations seem to answer the fourth question.

..... Doubtless searches of automobiles may be made in connection with arrests for violations of the game and fresh water fish laws and rules and regulations. Such searches should be made as an incident to an arrest and not for the purpose of gathering evidence from which an arrest may be made. Searches consequent upon duly issued search warrants may also be made. As to the question of the right of conservation agents to stop and search automobiles, although the right may exist in certain cases under proper circumstances, it should be usually presumed that such right does not exist. These observations seem to answer the fifth question.

November 3, 1949—049-533.

**ADJUTANT GENERAL—WEAPONS AND FIREARMS—USELESS—
FORFEITED—SALE—PROCEEDS**

QUESTION: Should the adjutant general be allowed to retain funds derived from the sale of arms or weapons received by him under authority of Section 790.08, Florida Statutes, 1941, as amended, and to treat such funds as public monies to be disbursed by him for the benefit of the State in the purchasing of necessary arms, riot equipment and ammunition for use in case of state emergencies?

To: Honorable Mark W. Lance, Adjutant General, State Arsenal, St. Augustine, Florida:

Attorney General Opinion 047-255, rendered by my predecessor in office on August 5, 1947, held:

.....
(b) That the proceeds from such sale would go into the state school fund under the authority of Section 4, Article 12 of the Constitution of Florida.

I concur with this opinion.

Therefore, it is my opinion that the Legislature did not intend for the adjutant general to retain and dispose of the proceeds from the sale of useless and forfeited arms or weapons.

January 20, 1950—050-21.

CONCEALED WEAPON—RETURN OF WEAPON—FORFEITURE OF WEAPON—\$790.08, F. S. '41

QUESTION: May a person legally recover a pistol after conviction for carrying it as a concealed weapon?

To: *Honorable C. L. Clark, Executive Assistant to the Governor:*

Mr. Pynes having been convicted of having or carrying concealed the very pistol which he now wishes returned to him, it is my opinion that he is not entitled to such return. The pistol stands forfeited to the State and should be delivered to the Adjutant General in compliance with the above mentioned statutory provision.

June 23, 1950—050-306.

CONSTABLES—TRAVELING—OFFICIAL DUTY—CARRYING GUN NOT PROHIBITED—\$790.05, FLORIDA STATUTES

QUESTION: Where a constable, carrying a gun while on official duty, travels through another county enroute to a point in his own district, is it unlawful for said constable to have a gun in his possession while traveling through said other county?

To: *Honorable Jacob J. Johns, Constable, Clay County, Starke, Florida:*

Therefore, the answer to your question is in the negative.

KIDNAPPING AND FALSE IMPRISONMENT

August 25, 1950—050-422.

MUNICIPALITIES—ARRESTS—DRUNK-O-METER TESTS—PRISONERS—TRANSFER ALLOWED—NO VIOLATION CHAPTER 805, FLORIDA STATUTES, ST. PETERSBURG AND MADEIRA BEACH

QUESTION: The municipalities of St. Petersburg Beach and Madeira Beach have police chiefs who are also deputy sheriffs. Neither municipality has a place of confinement for municipal prisoners, and neither has the facilities for giving Drunk-O-Meter tests. When the officers of these municipalities arrest persons for driving while under the influence of intoxicating liquor, is it a violation of the kidnapping laws of Florida for such officers to take such arrested persons to the city jail in St. Petersburg for detention and for the making of Drunk-O-Meter tests and, at the proper time, return such arrested persons to the municipality in which they were arrested, for the purpose of holding a hearing on the charge placed against them?

To: *Honorable James E. Phillips, Municipal Judge, Madeira Beach, and City Attorney, St. Petersburg, Florida:*

Sections 805.01 and 805.02 are the kidnapping laws of Florida.

In order to be guilty of violating Section 805.01, one must forcibly or secretly confine or imprison another person against his will, or he must confine or inveigle or kidnap another person, and in either event he must act "with intent either to cause him (such other person) to be *secretly* confined or imprisoned in this state against his will, or to cause him to be sent out of this state against his will." See Section 805.01; also see *State v. Register*, 9 So. 2d 804, and *Holroyd v. State*, 172 So. 700.

Even if a police officer of Madeira Beach or of St. Petersburg Beach should be thought to be acting "without lawful authority" when he takes to the St. Petersburg jail and there imprisons and subjects to a Drunk-O-Meter test a person arrested by him, such action would ordinarily not be a violation of Section 805.01 because of the absence of an intent to *secretly* confine or imprison the arrested person. It will not be necessary for me to determine whether such an officer acts "without lawful authority" within the contemplation of Section 805.01 when he takes a prisoner to the St. Petersburg jail and there confines him, until a situation arises where the officer has an intent to *secretly* confine or imprison the person arrested by him.

Section 805.02, the other kidnapping statute, has no application to the situation outlined by you, because that statute does not apply in the absence of an intent to hold for ransom the person kidnapped or imprisoned.

SALE OF MORGAGED PERSONAL PROPERTY; AND SIMILAR OFFENSES

March 28, 1950—050-153.

PROSECUTION—PRIOR MORTGAGES—FALSE PRETENSES— MISDEMEANOR—§818.02, FLORIDA STATUTES APPLICABLE

QUESTION: "Where a person verbally represents that he owns personal property free and clear of any mortgages, liens and encumbrances; where another party relying on the said representation takes a chattel mortgage on the said personal property; and where it appears that the said representation was false, and, in fact, at the time the chattel mortgage was executed there was outstanding a chattel mortgage covering the same personal property, should a prosecution be based on Section 817.01, Florida Statutes, 1941, Section 817.03, Florida Statutes, 1941, or Section 818.02, Florida Statutes, 1941?"

To: *Honorable Chester B. McMullen, State Attorney, Clearwater, Florida:*

.....

Since the statements in the present case were verbal, Section 817.03 could not apply.

.....

Section 817.01, Florida Statutes, 1941, due to its general nature, could be construed to cover the offense in the present case if it were

not for Section 818.02 which was obviously enacted by the legislature to specifically cover the factual situation at hand.

.....

It is therefore my opinion that any prosecution based on the factual situation outlined in your letter must be brought under Section 818.02, Florida Statutes, 1941.

TRESPASS AND INJURY TO REALTY AND SIMILAR OFFENSES

June 27, 1949—049-277.

CHOCTAWHATCHEE RIVER—POSTING LANDS ADJACENT TO—NO RIGHT PREVENT PUBLIC TRAVEL, FISHING, HUNTING, ON RIVER

QUESTION: May the owner of land lying adjacent to Choctaw-hatchee River enclose and post the lands using the river as an enclosure, and thereby prevent entry by others upon any bay, river, creek or lake tributary to the said river, for the purpose of fishing or hunting?

To: *Honorable Sam D. May, County Judge, Washington County, Chip-
ley, Florida:*

.....

..... while the owner of lands adjacent to a navigable stream may use the water mark of the stream as a boundary in lieu of a physical enclosure, such right does not authorize the extension of the natural boundary across the mark of any gulf, bay, river, creek, inlet, or other body of water tributary to waters of the state so as to prevent the free use thereof by the public for the purpose of passage or travel or for the purpose of taking fish therefrom.

.....

The question is, therefore, accordingly answered in the negative.

January 12, 1950—050-13.

COUNTY ROAD WITHIN FENCED ENCLOSURE—PROSECUTION— §821.04, CHAP. 588, F.S. '41, CHAP. 25357, ACTS OF 1949

QUESTION: Where an entire tract of land is enclosed by a fence, which includes a county road and where the owner of the said tract maintains cattle guards at the entrance and exit of the county road and where the owner of the said tract has placed 'no trespassing' signs along each side of the county road, is it necessary to fence both sides of the county road in order to prosecute one for trespassing who enters the said tract from the county road?

To: *Hon. Julian C. Calhoun, Assistant State Attorney, Putnam County,
Palatka, Florida:*

.....

..... in order to prosecute a person for trespassing who enters this land from the county road it will be necessary for the owner to fence both sides of the road.

ISSUING WORTHLESS CHECKS AND DRAFTS

May 15, 1950—050-241.

FALSE PRETENSES—WORTHLESS CHECKS—PAYEE KNOWINGLY
PASSING—PROSECUTION—§§832.01, 817.01,
FLORIDA STATUTES

QUESTION: Where the holder of a worthless check, knowing that the maker has no funds, arrangement or understanding with the drawee bank, sufficient to meet the check, cashes such check by endorsing it and passing it to a third person for the face amount thereof with intent to defraud such third person, and with such third person having no notice of the worthless character of the check, is such payee subject to prosecution under the bad check statute, i. e., Section 832.01, Florida Statutes; and, if not, what crime can be charged against such payee?

To: *Honorable William T. Harvey, Assistant County Solicitor, Jacksonville, Florida:*

The restricted wording of the bad check statute, Section 832.01, makes me doubt its applicability. It says:

"Any person, who, with intent to defraud, shall . . . utter . . . any check . . . upon any bank . . . , and who secures money . . . therefor, and who knowingly shall not have an arrangement, understanding or funds with such bank . . . sufficient to meet or pay the same," shall be guilty of an offense.

This statutory language appears to contemplate that the person uttering the check must have an arrangement, understanding or funds with the bank, sufficient to meet the check. Obviously, the payee of a check never has, and is not required by law or reason to have, any funds, arrangement or understanding with the drawee bank. It is the maker of the check upon whom that burden rest. Therefore, it would seem that this restrictive language in the statute excludes everybody but the maker.

However, it is my opinion that the payee can be prosecuted under Section 817.01 for obtaining money under false pretenses.

.....

OFFENSES BY AUCTIONEERS; PUBLIC OFFICERS
AND EMPLOYEES

January 22, 1949—049-27.

PURCHASE OF SUPPLIES—BOARD MEMBERS—EMPLOYEE OF
FIRM—NOT STOCKHOLDER

QUESTION: Is a Board of County Commissioners prohibited from purchasing supplies from a firm when an employee of said firm is also a member of the Board?

To: *Mr. John Treadwell, Jr., Attorney, Board of County Commissioners, Arcadia, DeSoto County, Florida:*

.....

This is in accord with opinions previously rendered by the office of

Attorney General, and published in the biennial reports of said office as follows:

Biennial report, 1907—page 194
 Biennial report, 1927—page 325
 Biennial report, 1931—page 593
 Biennial report, 1935—pages 233, 462
 Biennial report, 1946—page 731

The question must, therefore, be answered in the affirmative.

May 25, 1949—049-232.

COUNTY COMMISSIONERS—PURCHASE OF PETROLEUM PRODUCTS—MEMBER AS DISTRIBUTOR—STATUTORY VIOLATION

QUESTION: Does the purchase by the board of county commissioners of petroleum products from a service station which is served by a member of the board as a distributor of petroleum products constitute a violation of Section 839.09, Florida Statutes, 1941?

To: Honorable John H. Treadwell, Jr., Attorney, Board County Commissioners, Arcadia, Florida:

.....

It is my opinion that a board of county commissioners purchasing petroleum products from a service station which is an outlet for an oil distributor who is a member of such board is in violation of Section 839.09, Florida Statutes, 1941.

June 24, 1949—049-274.

HARBORMASTER—COMMISSION—EFFECTIVE DATE—ENTITLED OFFICIAL RECORDS FROM PREDECESSOR

QUESTIONS: 1. When a person is appointed to the office of Harbormaster of a port in Florida, and commission dated May 25, 1949, is issued to such appointee after he has duly qualified for the office, but such commission is not received by him until May 27, 1949, with respect to the powers, duties and fees of office, when is the commission effective?

2. Is such appointee entitled to the official records of such office from his predecessor?

To: Honorable William P. Head, Harbormaster, Jacksonville, Duval County, Florida:

The above questions are answered in their numbered order as follows:

(1) Inquiry at the office of the Secretary of State indicates that on the same day that this appointee filed oath of office and bond with the Secretary of State, his commission was issued. Hence, it appears that his term of office became effective on May 25, 1949. Nevertheless, until the appointee presented himself to his predecessor to take over the official duties of the office in pursuance of his appointment thereto, it does not seem that such appointee would be entitled to any fees of the office which may have been earned between

the date of such commission and the time he actually took over the office and began to discharge the duties thereof.

(2) The request for opinion does not state the nature of the records of the office referred to; hence, any answer to the question must of necessity be a general one. It appears certain that any of the official records, papers, documents or other writings appertaining to this office of Harbormaster are required to be delivered to the above appointee by his predecessor in office (Section 839.14, Florida Statutes).

August 5, 1949—049-363.

**BOARD OF COUNTY COMMISSIONERS—MEMBER AS RECEIVER
FOR MIAMI RETREAT, INC.—MENTAL PATIENTS—CON-
TINUED PAY—CARE OF LEGAL—DADE COUNTY**

QUESTION: May the Dade county Board of Commissioners continue to pay "Miami Retreat, Inc." for care of mental patients under the following circumstances? Dade county has dealt with Miami Retreat for a number of years by paying for the care of mental patients there. The Miami Retreat is the only place in the county considered by the Board to have facilities for taking care of such patients. One of the members of the Board of County Commissioners has been appointed Receiver for Charles A. Reed, Charles Reed Corporation, Miami Retreat, Inc. and Miami Retreat Foundation. The court in appointing the Receiver requires him to take possession and custody of all assets of the defendants; to manage and operate the business of the defendants, etc. He is required to post a bond and the amount of his compensation may be determined in part by the amount of business done by him as Receiver.

To: Honorable Park H. Campbell, Miami, Florida:

.....

..... Your question is therefore answered in the affirmative.

October 25, 1949—049-510.

**COUNTY COMMISSIONERS—MEMBER OF PARTNERSHIP IN LUM-
BER BUILDING SUPPLY BUSINESS—PURCHASES
ALLOWED—COMPETITIVE BIDS REQUIRED—
DADE CO.—§839.09 FLORIDA STATUTES**

QUESTION: "One of the members of our Dade County Board of County Commissioners is a member of a partnership in the lumber and building supply business. From time to time, after acceptance of bids by the Board, successful bidders ask his firm for bids for lumber and other building supplies on a competitive basis with other lumber and building supply concerns. When the contracts are awarded by the Board of County Commissioners, the particular member thereof does not know whether or not the successful bidders will ask for bids from his firm, nor does such member know whether or not if his firm should make such bids it would be successful.

"Under these conditions, will you please let me know whether or not in your opinion it is lawful for the firm of such member of the Board of County Commissioners to furnish lumber and other building supplies to successful bidders on county contracts?"

To: Honorable Park H. Campbell, Attorney, Board of County Commissioners, Dade County, Miami, Florida:

.....

Your question is therefore answered in the affirmative.

March 11, 1950—050-124.

SEE OPINION NUMBER 049-27

COUNTY COMMISSIONER AS SALESMAN—SALES TO COUNTY BY
FIRM REPRESENTED—VIOLATION §839.09, FLORIDA
STATUTES 1941

QUESTION: "I was elected in May 1948 to the office of county commission of Dade County, taking office on January 4, 1949.

"I have been offered a job as salesman and representative for a local concern here in Dade County. This concern at the present time sells to the county certain of its products. If I took the job which has been offered, I would not have any financial interest whatsoever in the company, and I would not influence any of the county purchases from this concern.

"I would like a ruling from you as to whether there would be a violation on my part, or the county's, provided I took this job, and the county continues to buy from the concern?"

To: Honorable Jesse H. Yarborough, County Commissioner, Dade County, Miami, Florida:

There is, of course, nothing illegal in your accepting the position with this concern, but thereafter it would be unlawful for the board of county commissioners to purchase any products from such concern in view of the provisions of Section 839.09, Florida Statutes 1941. This is in accord with a number of previous rulings of this office. See Biennial Report, 1907—page 194; Biennial Report, 1927—page 325; Biennial Report, 1931—page 593; Biennial Report, 1935—pages 233, 462; Biennial Report, 1946—page 731.

I am enclosing a copy of the most recent ruling on this question, Attorney General's Opinion No. 049-27, for your information.

March 22, 1950—050-141.

BASIC SCIENCES—DISPENSING OPTICIANS—INVESTIGATOR—
EMPLOYMENT AUTHORIZED—CHAPTER 25255, ACTS 1949

QUESTION: May the State Board of Dispensing Opticians employ a member of the board as an investigator, authorized by Chapter 25255, Laws of Florida, 1949, and fix the compensation to be paid for services rendered as such investigator?

To: Honorable C. M. Gay, State Comptroller:

.....

..... The question is accordingly answered in the affirmative.

GAMBLING

August 8, 1949—049-362.

"SUIT CLUB"—CROSS BETWEEN FLIM FLAM GAME AND LOTTERY—OPERATION VIOLATION §849.09, FLORIDA STATUTES

QUESTION: Do the following circumstances constitute a violation of the law? "A person selects a number from 1 to 100 and agrees to pay \$2.00 per week for a period of 25 weeks toward the purchase of a suit. Each week on Wednesday the last two figures in the Gold Assets quotation in the Position of the Treasury report in the daily newspaper, are checked and the person holding those two numbers wins a suit without paying in any more money. The store naturally retains whatever money has already been paid in. If, at the end of 25 weeks, you have not won a suit, you receive the one that you have paid for, or \$50.00 in trade."

To: Mr. J. R. Jarboe, Town Marshal, Neptune Beach, Florida:

.....

Your question is, therefore, answered in the affirmative.

November 1, 1949—049-519.

LOTTERY—BINGO GAME—"CHINA CLIPPER" RESTURANT AND LIQUOR STORE—VIOLATIONS LOTTERY LAWS

QUESTION: Does a restaurant and liquor store which operates a bingo game under the following circumstances violate the lottery laws of this State?

- (a) Contestants pay no admission charge.
- (b) Contestants are given a free bingo card.
- (c) Contestants are under no obligation to buy anything while they play the game.
- (d) If a contestant wins a bingo he is given an opportunity to answer three questions.
- (e) If contestant answers the three questions correctly he is given a prize.

To: Honorable V. R. Fisher, County Solicitor, Hillsborough County, Tampa, Florida:

In order to constitute a lottery in this State there must be three elements present, viz: prize, consideration, and award by chance.

.....

The third element presents a more difficult problem and is, in my opinion, dependent solely upon the type of questions that are asked the contestant before he is given a prize.

.....

Therefore, it is my opinion that the first two elements of a lottery are present, viz: prize and consideration. Whether the third element is present is a question that must be determined by the local authorities on a purely factual basis.

March 11, 1950—050-121.

POOL ROOMS—MINORS PLAYING POOL IN OR VISITING UNLAWFUL—\$849.06, FLORIDA STATUTES APPLICABLE

QUESTION: Is it unlawful to allow boys under the age of 18 years to visit a pool room or to shoot pool in a pool room?

To: Honorable Fuller Warren, Governor:

.....

Therefore, the question is answered in the affirmative, since it is unlawful to allow persons under the age of 21 years to visit a pool room or shoot pool in a pool room.

April 1, 1950—050-166.

SHERIFF'S DUTIES—GAMBLING—PUNCHBOARDS LICENSED BY MUNICIPALITIES—VIOLATION OF CHAPTER 349, FLORIDA STATUTES

QUESTION: Does the fact that certain municipalities have licensed punchboards lessen or affect the sheriff's duty to enforce the state laws which prohibit gambling on punchboards, setting up or promoting a punchboard for the disposal of money or other thing of value, and keeping a place for the purpose of gambling on punchboards or permitting a person to play on a punchboard in one's place for money or other thing of value?

To: Honorable Fuller Warren, Governor:

.....

But, even if the charters of these cities expressly authorize the enactment of ordinances licensing gambling on punchboards, such charter provisions would be unconstitutional, null and void for the following reasons:

(1) Any such charter provisions would violate Article 3, Section 20, Constitution of Florida, because they would be special or local laws regulating the jurisdiction and duties of classes of officers other than municipal officers. Such charter provisions would give said cities the power to regulate the jurisdiction and duties of the sheriff and the constables of Palm Beach County, because, if valid, such charter provisions would authorize said cities to enact ordinances which would bar those officers from enforcing the general gambling laws against gambling on punchboards in said named cities. Such charter provisions would give cities the power to regulate the jurisdiction and duties of the Criminal Court of Record and the Justice of the Peace Courts of Palm Beach County, because, if valid, such charter provisions would authorize said cities to enact ordinances which would bar those officers from entertaining prosecutions for gambling with punchboards in said named cities. The Legislature itself cannot pass a special or local law which would directly thus regulate the jurisdiction and duties of said classes of officers, and therefore it cannot indirectly accomplish the same purpose by enacting a charter act which would give a city the right to so regulate by granting licenses.

(2) Any such charter provisions would violate Article 3, Section 20, Constitution of Florida, because they would be special or local

acts for the punishment of crime or misdemeanor. Such charter provisions would give said cities the power to exempt from punishment for crimes and misdemeanors committed in said cities by means of gambling with punchboards, despite the fact that the general law requires such punishment. The Legislature could not validly pass a special or local law directly creating such an exemption, and therefore it cannot pass a charter act giving a city the right to do the same thing by granting licenses.

My conclusion is that violations of Sections 849.01, 849.08, and/or 849.11 by means of punchboards cannot be licensed by any city and that persons who violate said statutes in a city by the use of punchboards are liable to prosecution even though they may have been licensed by said cities to operate such punchboards; and that such licenses do not lessen or affect the sheriff's duty to enforce said statutes as against the use or keeping of punchboards in violation of said statutes.

August 11, 1950—050-393.

**GAMBLING—ONE-BALL MACHINES UNLAWFUL—§§849.15(1),
849.16, FLORIDA STATUTES**

QUESTION: Is it unlawful to possess or permit the operation of a one-ball machine for which a State and County license has been purchased, which machine does not pay off any money but is so designed that when operated as the result of the insertion of a nickel, the player, by reason of an element of chance unpredictable by him, may become entitled to receive free plays?

To: Honorable Alva Thomas, Sheriff, Bay County, Panama City, Florida:

.....

Therefore, it is my opinion that your question is properly answered in the affirmative.

August 24, 1950—050-413.

LIQUORS—WHEEL NUMBERS—SETTING UP LOTTERY PROHIBITED—§§849.09, 849.11, FLORIDA STATUTES

QUESTION: Where a person buys a bottle of liquor from the operator of a liquor package store and is given an opportunity to select a number on a wheel, spin the wheel and if the wheel stops on the number he has selected he is given another bottle of whiskey of the same size and brand without cost, is such practice illegal?

To: Honorable M. H. Bowman, Sheriff, Sumter County, Bushnell, Florida:

.....

Your question seems to fall squarely within the facts cited in the Washington case by the Supreme Court of Michigan and therefore it is my opinion that the practice set out in your question is a lottery and therefore your question is answered in the affirmative.

Note: See *Sproat-Temple Theatre Corp. vs. Colonial Theatrical Enterprises, Inc.*, 267 N.W. 602, citing *Society Theatre vs. Seattle*, 203 P. 21.

August 25, 1950—050-419—050-393—050-166.

**GAMBLING—FREE GAME COIN DEVICES HELD ILLEGAL—
CHAPTER 849, FLORIDA STATUTES**

QUESTIONS: 1. In the city of Crestview, Florida, there is a certain type of "triple-bell free play," slot type machine. A city license has been issued for it. * * * The machine does not "pay off" in money but has an automatic "free play" mechanism. It has a card in a conspicuous place saying that the machine is for amusement only. Is the operation of such types of machines legal in the state of Florida?

2. Is there any quick way to determine which machines are legal and which illegal?

3. Is there any published guide to aid law officers in the determination of what constitutes an illegal machine?

To: Honorable Ferrin C. Campbell, Sheriff, Okaloosa County, Crestview, Florida:

AS TO QUESTION ONE:

It is my opinion that the "triple-bell free play" slot type machine described by you is a "slot machine or device" within the definition laid down in Section 849.16, Florida Statutes, and that therefore Section 849.15 makes it unlawful to possess such a machine or to permit it to be operated. (See enclosed copy of my opinion No. 050-393, dated August 11, 1950. The holding of that opinion in respect to the "free play" machine therein discussed is equally applicable to the "free play" machines described by you.)

The fact that city licenses have been obtained for said machines does not make it lawful to possess them or to permit them to be operated, because the law does not permit the licensing of such machines. The general laws do not authorize such licensing (See enclosed copy of above mentioned opinion No. 050-393). I am not familiar with the charter of the City of Crestview, but I think it may safely be assumed that said charter goes no further than to grant general licensing powers and does not authorize the licensing of machines the possession of which is made illegal by Chapter 849, Florida Statutes. But, even if a provision of the City Charter did authorize the licensing of such machines despite the prohibition of Chapter 849, I think that such charter provision would be inoperative for the reasons given in my opinion No. 050-166, dated April 1, 1950, for holding that a city charter provision authorizing a city to license gambling on punchboards would be inoperative, a copy of which opinion is enclosed herewith.

AS TO QUESTION TWO:

Section 849.16 defines the kind of slot machines or devices which are illegal. With reference to any particular machine, it will be necessary for you to determine whether, as a matter of fact, it comes within that definition.

For your guidance, I point out that although it is unlawful to possess or permit the operation of a "free play" machine which oper-

ates, or may be operated, as the result of the insertion of a coin or other object (See Sections 849.15 and 849.16; enclosed copy of Attorney General's Opinion No. 050-393), yet a machine which is operated for amusement only, and which does not dispense any free plays or other form of prize or reward whatsoever, may lawfully be possessed and operated (*Stoutamire v. Pratt*, 5 So. 2d 248). However, even a machine of the type last mentioned can be used as a gambling device, as by betting on the outcome of the operation thereof, and it is a violation of the law to gamble on such a machine (Sections 849.08 and 849.11), as well as to permit it to be gambled on in a place under one's charge, control or management (Section 849.01).

AS TO QUESTION THREE:

I do not know of any published guide to aid law officials in determining what constitutes an illegal machine.

September 1, 1950—050-431.

GAMBLING STATUTES—MERCHANDISE AWARD ON BASIS OF SKILL—NO VIOLATION

QUESTION: Does the awarding of merchandise prizes on the basis of skill, without the element of chance (such as in shooting galleries or concessions where darts or baseballs are thrown at targets), constitute a violation of the Florida gambling statutes?

To: Honorable Fuller Warren, Governor:

.....

Therefore, it is my opinion that your question is properly answered in the negative.

September 11, 1950—050-439.

GAMBLING—SOCIAL—DIVERSIONAL PASTIMES—"BINGO" GAMES BY CHURCHES AND VETERANS' ORGANIZATIONS—UNLAWFUL

QUESTION: Are games such as "Bingo" unlawful when they are primarily social and diversional pastimes conducted by churches and veterans' organizations?

To: Honorable Fuller Warren, Governor of Florida:

The Supreme Court has specifically held that people who play "Bingo" are gambling (*Creash v. State*, 179 So. 149).

.....

Therefore, the question presented to me is answered in the affirmative.

DRUNKENNESS, VAGRANCY; DESERTION

April 22, 1949—049-176.

EXTRADITION LEGAL—FAILURE TO SUPPORT CHILD—AGREEMENT IN CONNECTION WITH DIVORCE

QUESTION: In connection with divorce proceedings, a father enters into an agreement with his wife to pay her stipulated sums for

support of their minor child. Does this preclude prosecution of the father for thereafter withholding the means of support from said child, and does it preclude the extradition of the father from another state to answer such criminal charge?

To: *Hon. J. B. Flaherty, Assistant County Solicitor, Criminal Court of Record, Miami 32, Florida:*

..... there is nothing to prevent prosecution for crime under circumstances as set forth in your letter. It must naturally follow that extradition may be resorted to in order to secure the return of the accused to this state for trial after criminal proceedings shall have been instituted against him.

June 23, 1950—050-311.

CRIMINAL COURT JURISDICTION—WIFE AND CHILDREN—DE-
SECTION—NON-SUPPORT—DIVORCE—§856.04,
FLORIDA STATUTES

QUESTIONS: 1. If I file an information against a man charging him with violation of Section 856.04, that is, failure to support his wife or children, and thereafter the husband and father files a suit for divorce in the Circuit Court, or the wife files a bill for divorce or separate maintenance, does the filing of the bill for divorce or separate maintenance relieve the Criminal Court of its jurisdiction of the criminal case?

2. If, after a bill for divorce or separate maintenance is filed in the Circuit Court, and a decree is entered, ordering the husband to pay the wife so much support money, or to pay so much support money for the care of his children, can I thereafter file a criminal information charging the man with failure to support either his wife or children, and successfully maintain the criminal action?

To: *Honorable Robert R. Taylor, County Solicitor, Miami, Florida:*

AS TO QUESTION 1

In my opinion, the answer to Question 1 is, no.

.....

AS TO QUESTION 2

In discussing this question, I shall assume that you have in mind the filing of an information against the husband for withholding support from the wife and/or children during the period after the decree is entered by the Circuit Court requiring him to make specific payments, rather than for withholding support during the period before the decree is entered.

.....

..... the father who withholds support from his children subsequent to the entry of a decree divorcing the mother from the father and requiring payments to be made by the father for the benefit of the children, is not relieved of criminal liability by the existence of the decree, and he can be prosecuted for withholding support from his children notwithstanding the decree.

By the same token, a father who withholds support from his children after a decree which does not grant a divorce but which

requires payment for their benefit is not relieved of criminal liability by the existence of the decree.

If the decree provides payments for the wife and also divorces her from the husband, I do not think that he could be prosecuted for thereafter withholding the means of support from her, even if he wrongfully fails to make the required payments. . . .

If the decree merely provides for payments to the wife, without divorcing her, it would seem that the reasoning behind the rule above quoted from American Jurisprudence in regard to children would equally apply to the wife and that the existence of the support money decree in favor of the wife would not defeat a prosecution for withholding support from the wife. However, the existence of such a decree would probably bar a prosecution for "desertion" of the wife, as distinguished from withholding support from her. . . .

October 19, 1950.—050-496—050-484.

**COIN OPERATED PIN BALL MACHINES—NO FREE GAMES,
PRIZES OR REWARDS DISPENSED—NOT UNLAWFUL**

QUESTION: "Coin operated pin-ball machines are in play here, duly licensed by the County and City Tax Collectors. My investigation discloses that no prizes, rewards, free games, or offer to use said machines upon any chance or contingency of the play is made.

"Are these gambling devices under Section 849.16 F. S. A. 1941?"

To: *Honorable Berlin A. Sawyer, Sheriff, Monroe County, Key West, Florida:*

. . . . Coin operated pin ball machines are not unlawful unless they dispense free games or some other form of prize or reward.

It would, of course, be unlawful for a person to use such a machine for gambling purposes or for the person in possession of it to permit it to be used for gambling purposes.

October 20, 1950.—050-498.

**CHARITY SHOWS—FREE WILL OFFERING—NAMES DRAWN
FOR DOOR PRIZES—NO VIOLATION OF GAMBLING LAWS**

STATEMENT: "The public is invited to our shows; there is no admission charge. A free will offering is taken up during the show. The names of local charities are placed in a box and during the show one name is drawn from the box. The charity so chosen receives the entire amount of the free will offering, without deductions of any kind, and the amount is turned over to that charity during the performance.

"Further, members of the audience with the exception of small children, as they arrive for the show, receive a numbered slip for the drawing of a door prize. There is no charge for the numbered slip and, as stated, there is no charge for admission. At the end of the performance one number is drawn from a box and the person holding the number receives the door prize."

To: *Honorable Fuller Warren, Governor of Florida:*

It is my opinion that said activities do not violate the gambling laws of Florida.

November 8, 1950.—050-520.

SEARCH AND SEIZURE—AUTOMOBILE TRANSPORTING BOLITA
TICKETS—EVIDENCE OF GAMBLING—NO SEARCH
WARRANT REQUIRED—§849.09, FLORIDA STATUTES

QUESTION: "Is it necessary to obtain a search warrant in order to search an automobile where the searching officer has probable cause to believe that the person in the automobile has in his possession bolita tickets or other evidences of gambling?"

To: *Honorable Herbert E. Davis, Chief of Police, Webster, Florida:*

Section 22, Declaration of Rights, prohibits any unreasonable search and seizure. The law does not prohibit *reasonable* searches without warrants.

.....

It is therefore my opinion that it is not necessary to have a search warrant in order to search an automobile where the searching officer has probable cause to believe that the person in the automobile has in his possession bolita tickets or other evidences of gambling and your question is answered in the negative.

November 15, 1950.—050-528.

GAMBLING—"TURKEY SHOOT"—§849.14, FLORIDA
STATUTES APPLICABLE

STATEMENT: I understand the ordinary and commonly known term "turkey shoot" involves the following procedure: Numerous targets are printed, all of which are exactly the same. Numerous persons purchase an opportunity to fire with some type of firearm at these targets. The name of each person doing the shooting is placed on the back of the target on which he fires. A sufficient number of opportunities are sold to cover the reasonable value of each turkey—that is to say, if the turkey is worth \$5.00 and the right to fire sells for 50 cents, ten targets will be sold. All of the contestants fire at their individual targets and then the person who has the best score on the target wins the turkey.

To: *Honorable C. L. Clark, Administrative Assistant to Governor Warren:*

The statute here involved is Section 849.14, Florida Statutes,

This situation is quite different from the game of skill where some individual throws at milk bottles or some other object for a possible prize; in that case each participant has an opportunity to win if he is skillful enough. In the above case of the turkey shoot only one person can possibly win a prize; each contestant is wagering his 50 cents in the example given against the entrance fees of his competitor.

Certainly I do not believe any law enforcement officer would knowingly interfere with any person legally disposing of his goods and merchandise, however you have asked my construction of the law and while there may be other ways of carrying on "turkey shoots" that would be legal, it is my opinion that such a shoot carried on as outlined above would be in violation of the law.

It is recognized that "turkey shoots" as such have received general public tolerance for many years. Moreover, it is doubted that such shoots affect the public morals materially. However, since the Governor's office has requested the opinion, we are giving you our considered understanding of the law. If we departed from legal principles in this instance it would simply be a surrender of our legal views to accord with popular feeling and would, in our opinion, be inconsistent with the prevailing definition of what constitutes gambling or betting. It is our belief that it is for the legislature and not this office to determine whether exceptions should be made in the general gambling laws to correspond with popular sentiment. It is fundamental that this office cannot exercise the power of legislation.

December 18, 1950.—050-569.

**LOTTERY LAWS—NEW GROCERY STORE—FREE MERCHANDISE
—NO VIOLATION OF**

QUESTION: Is the giving away of free merchandise in connection with the opening of a new grocery store where special bargains and attractions will be offered to the purchasing public, in violation of the laws of this state?

To: Hon. T. E. Duncan, State Attorney, Gainesville, Florida:

.....
..... it appears that there is no consideration required of the person securing the merchandise, but that said merchandise is given to such persons gratuitously and therefore it is my opinion that it would not be in violation of any state law.

SUNDAY LAWS

December 15, 1950.—050-562.

**WEAPONS AND FIREARMS—HUNTING ON SUNDAY PROHIBITED
BY §855.04, FLORIDA STATUTES**

QUESTION: Does Section 855.04, Florida Statutes, prohibit the use of firearms for hunting on Sunday, in view of the provisions of Section 855.06, Florida Statutes?

To: Hon. Marshall R. Hayes, Sheriff, Santa Rosa County, Florida:

.....
It appears that Section 855.06, which was enacted subsequent to Section 855.04, supersedes Section 855.04 in so far as the use of firearms for trap, target and skeet shooting on Sunday is concerned and such use is permitted by Section 855.06.

It does not supersede or alter the other provisions of Section 855.04 pertaining to the use of firearms for hunting on Sunday. Hunting on

Sunday with firearms is therefore still prohibited by Section 855.04, Florida Statutes.

OFFENSES CONCERNING AIRCRAFT, MOTOR VEHICLES AND RAILROAD TRAINS

November 3, 1950.—050-517.

AIRCRAFT—CARELESS OR RECKLESS OPERATION OF— C. 25259, ACTS 1949—VALIDITY

QUESTION: Is Section 2, Chapter 25259, Acts of 1949 (Section 860.13 (2) Florida Statutes) a valid law?

To: *Mr. Waldron F. Schanz, State Aviation Supervisor, Florida State Improvement Commission:*

.....

Therefore, until such time as a court of competent jurisdiction makes a contrary determination, the above quoted statute should be considered valid and should be enforced as written.

VIOLATIONS OF CERTAIN COMMERCIAL RESTRICTIONS

June 28, 1949—049-279.

FICTITIOUS NAME LAW—REGISTRATION REQUIRED

QUESTION: "Parties of the names of Touchton and Watkins engaged in the grocery business under the name of Touchton and Watkins. Recently Touchton bought Watkins' interest and on account of having established credit ratings under the firm name as shown above would like to continue to operate under the said name, that is to say, Touchton & Watkins." Should he register under Section 865.09, Florida Statutes?

To: *Honorable O. P. Herndon, Clerk of the Circuit Court, Seminole County, Sanford, Florida:*

..... It is my opinion that there should be a registration under the cited act and in accordance therewith.

August 4, 1950—050-379.

FICTITIOUS NAME STATUTE—REQUIREMENT AS TO CORPORATIONS—§865.09, FLORIDA STATUTES

QUESTION: Is a corporation which operates a business under a name other than its incorporated name required to register such fictitious name with the Clerk of the Circuit Court, pursuant to Section 865.09, Florida Statutes?

To: *Honorable Herbert S. Shapiro, Assistant County Solicitor, Dade County, Miami, Florida:*

.....

Therefore, the question is answered in the affirmative.

AFFRAYS; RIOTS; ROUTS; UNLAWFUL ASSEMBLIES

October 21, 1949—049-503—045-170.

JUSTICES OF PEACE—ARRESTS—POWER TO DISPERSE RIOTOUS ASSEMBLIES—§870.04, FLORIDA STATUTES—APPLICABLE

QUESTION: By virtue of his office, what authority does a justice of the peace have to make arrests?

To: Honorable D. C. Suggs, Justice of the Peace, Millville, Florida:

Section 870.04, Florida Statutes, grants to a justice of the peace power to disperse riotous assemblies and to arrest the participants if they fail to disperse immediately and peaceably upon his command. There appears to be no other instance in our constitution and statutes for a justice of the peace, by virtue of his office, to make arrests.

OFFENSES AGAINST SUFFRAGE

March 22, 1950—050-143.

CLERKS OF CIRCUIT COURT—POLITICAL ADVERTISING—§875.37, FLORIDA STATUTES—VIOLATION OF

QUESTIONS: 1. What are the provisions and restrictions of Section 875.37, Florida Statutes, relating to the publishing and circulating of political advertisements and campaign literature?

2. Does the law requiring that political advertising be signed by the author or other person or persons described in Section 875.37, Florida Statutes, apply to political advertising by radio, sound truck or television?

3. Does the clerk of the circuit court have any duty with respect to the laws referred to in the first question as related to candidates in the primary?

To: Honorable George G. Crawford, Clerk of the Circuit Court, Leon County, Tallahassee, Florida:

..... in my opinion the above questions are answered as follows:

(1) Section 875.37 is a proper exercise of legislative power in direct pursuance of Article III, Section 26, Florida Constitution (Ex parte Hawthorne, supra). The provisions of the section in relation to the several types of political advertising and campaign literature referred to are construed to provide the following:

(a) *Newspaper advertising.*—This type of political advertising, published or circulated prior to or on the primary election day, must be signed by the individual or individuals (as distinguished from a group formed as a club or committee) causing the advertising to be published; or if published by a club or committee, the requirement as to signing is met if only the chairman and secretary of the organization sign the same. All such advertising must be marked, "Paid Advertisement."

(b) *Other than newspaper advertising.*—This type of advertising or campaign literature, published or circulated prior to or on the

primary election day, is required to be signed in the same manner as required for newspaper advertising as set forth in preceding paragraph (a). In addition, all such advertising is required to have on it the name of the printer or publisher thereof.

(c) *Penalties.*—Any person who publishes or circulates any such political advertisements or campaign literature without the name of the "author" and the name of the printer or publisher thereon, as required by Section 875.37, shall upon conviction be fined not exceeding \$1,000 or imprisoned not exceeding one year. As stated, in absence of court construction, "author" shall be construed to mean the individual or individuals causing such matter to be published or circulated or, the chairman and secretary of a club or committee if same is published or circulated by such organization. Furthermore, in absence of such court construction, ordinary caution dictates that newspaper management should refuse to accept for publication any such political advertising which fails to meet the requirements set forth in paragraph (a) above.

(2) Section 875.37 does not apply to political advertising over radio, sound trucks or television. Further, we do not appear to have any statutes similar to Section 875.37 and applying to such described media of political advertising.

(3) The statutes do not appear to place any legal duty upon the clerk of the circuit court in instances where candidates or those in their behalf violate provisions of Section 875.37.

April 25, 1950—050-217.

STATE OFFICERS AND EMPLOYEES—POLITICAL ACTIVITIES
PROHIBITED—CHAPTERS 25138, 25360, ACTS 1949
APPLICABLE

QUESTION: What political activities of public officers and employees of this state are prohibited by Chapter 25138, as amended by Chapter 25360, Laws of Florida, Acts of 1949?

To: *Honorable William B. Tippetts, Chairman, Democratic Executive Committee, Pinellas County, St. Petersburg, Florida:*

.....

(1) A state or county officer is not restrained by this act from engaging in the following political activities: (a) From becoming a candidate for public office and actively campaigning for such office. (b) All such persons, of course, by the provisions of the section, retain the right to vote as they may choose and express their opinion on all political subjects and candidates. Thus, it would seem that the act specifically permits any such officer or employee to freely express himself concerning his political ideas in relation to any matter or candidate short of soliciting votes for any such matter or for any such candidate. (c) In view of the specific provision of subdivision (2) of the section quoted above and in the absence of specific prohibition against it, the act is construed as not prohibiting any such public officer or employee from voluntarily contributing to the campaign expense of any candidate in this state.

(2) A state or county officer or employee should consider himself prohibited by this act from engaging in the following political activities: (a) Taking any active part in political management or political campaigns other than with respect to his own candidacy for office. (b) Soliciting funds or votes for any candidate for nomination or election to office, or by himself or through others, directly or indirectly coercing, intimidating or influencing, by promise or otherwise, any person to vote for or contribute funds to a candidate for nomination or election; provided, that any such officer or employee shall have the full right to become a candidate for nomination or election and as such to engage in active campaigning and to do and perform all other legitimate acts in the furtherance of his candidacy. (c) Directly or indirectly coercing, attempting to coerce, commanding or advising any other officer or employee to pay, lend or contribute any part of his salary or compensation or anything else of value to any party, committee, organization, agency or person for political purposes. (d) Directly or indirectly coercing, or attempting to coerce, commanding or advising any such officer or employee as to where he might purchase commodities, or interfering in any other way with the personal rights of said officer or employee.

August 14, 1950—050-395.

REPRESENTATIVES OF CORPORATIONS—POLITICAL CONTRIBUTIONS—§§550.07, 875.19, FLORIDA STATUTES

QUESTIONS: 1. "Does a contributions by an officer, employee, agent or attorney of a domestic corporation, in his individual capacity, to a political campaign violate the laws of the State of Florida, and especially Section 875.19, Florida Statutes, 1949, so as to require dissolution of the corporation by law?

2. "Does Section 550.07, Florida Statutes, 1941, prohibit an officer or stockholder of a corporation holding a permit and license to conduct racing, from making a contribution in such officer's or stockholder's individual capacity, to any political party, or to any candidate for any state, county, district or municipal office?"

To: Honorable Fuller Warren, Governor:

.....

It follows that in my opinion the answer to both questions is that under Sections 875.19 and 550.07 a political contribution by a representative of a corporation who is authorized to bind the corporation in its usual business transactions is prima facie a contribution of the corporation. But such presumption may be rebutted by clear and convincing evidence showing the contribution was made individually and not for and on behalf of or not directly or indirectly for the corporation.

CRIMINAL ANARCHY, COMMUNISM, ETC.

June 7, 1949—049-243.

LOYALTY AND ANTI-COMMUNIST OATH—PUBLIC OFFICERS—EMPLOYEES—CITIZENS—OTHER COUNTRIES—APPLICATION FOR CITIZENSHIP

QUESTION: What changes, if any, may be made in the loyalty

or anti-communist oath required by Chapter 25046, Laws of 1949, by the following types of public employees:

1. Instructors employed for a limited time who are citizens of another country.
2. Instructors employed on a permanent basis who have made application for citizenship, but have not received their final naturalization papers.
3. Students from foreign countries who are allowed to work part-time as student assistants.

To: Board of Control:

.....
..... It was not the intention of the act to limit public employment to citizens of Florida and the United States. There are other statutes on that subject.

The words "a citizen of the State of Florida and of the United States of America," is merely descriptio personae and not a requirement for employment. It is my opinion that if the employee is not a citizen of this country, he may substitute for the quoted words a statement that he is a citizen of whatever country he may be a citizen. It would be appropriate to add, if such be the case, that he has applied for citizenship in the United States or intends to apply for citizenship in the United States, or whatever the facts may be. It is my further opinion that when such non-citizen employee has filed an oath changed in the manner herein set out, it will not be unlawful to employ and pay him for his services. The act becomes effective on August 2, 1949.

June 17, 1949—049-261.

LOYALTY AND ANTI-COMMUNIST OATH—CIRCUIT JUDGES,
WHERE TO FILE—§§876.05-876.10

QUESTION: Where should a circuit judge file his loyalty and anti-communist oath required by Chapter 25046, Laws of 1949?

To: Honorable E. C. Welch, Judge, Circuit Court, Marianna, Florida:

I think it would be sufficient for the circuit judge to execute the oath and file in his own office. However, there are other considerations which suggest further filing by the circuit judge. . . .

In order to avoid repetition of a similar certificate by the circuit judge on each requisition he makes, and for practical reasons and administrative purposes, I suggest that the circuit judge file his oath with the State Comptroller who will then not need the certificate. I might add that the Comptroller is prepared to file these oaths of the circuit judges.

June 18, 1949—049-262.

LOYALTY AND ANTI-COMMUNIST OATH—PENSIONERS, RETIRED PERSONS, ETC., NOT REQUIRED TO TAKE—
§§876.05-876.10

QUESTIONS: Does Chapter 25046, Laws of 1949, require that the

oath, loyalty and anti-communist oath, be filed by any or all of the following persons, and if so, with whom should the oath be filed:

1. Persons receiving pensions?
2. Persons receiving retirement benefits?
3. Persons receiving old age assistance?
4. Payments under relief acts?
5. Persons who receive fees for professional services at various times?

To: *Honorable C. M. Gay, State Comptroller:*

.....
 the statute was intended to cover only public officers and employees and candidates for public office, and was not intended to apply to persons receiving pensions, retirement benefits, old age assistance or payments under relief acts. Accordingly, it is my opinion that it is unnecessary for persons in the latter groups to file the oath.

I cannot give you an answer as to "persons who receive fees for professional services at various times." No doubt some of them may be covered by the act; others probably are not. It will be necessary to consider each of such cases under its own circumstances.

June 29, 1949—049-291.

LOYALTY AND ANTI-COMMUNIST OATH—COUNTY JUDGE AND HIS EMPLOYEES—PLACE OF FILING—§§876.05-876.10

QUESTION: Where should a county judge and his employees file their loyalty and anti-communist oath as required by Chapter 25046, Laws of 1949?

To: *Honorable Causey S. Green, County Judge, Putnam County, Palatka, Florida:*

.....
 I am of the opinion that the county judge and his employees should file their affidavits in the county judge's office. However, in so far as the board of county commissioners pay certain fees for services performed by the county judge, it is suggested that for practical and administrative reasons the county judge should also file a duplicate with the county commissioners.

July 5, 1949—049-293.

LOYALTY AND ANTI-COMMUNIST OATH—COUNTY EMPLOYEES ON CASUAL BASIS—NOT REQUIRED—§§876.05-876.10 F. S.

QUESTION: Does Chapter 25046, Laws of 1949, require that the loyalty and anti-communist oath be filed by jurors, inspectors of elections, special deputy sheriffs at elections, and persons employed as day laborers for odd jobs on the Court House or grounds?

To: *Honorable C. M. Gay, State Comptroller:*

..... It is my opinion that it is unnecessary for those employees to file the oath.

July 5, 1949—049-294.

RE: LOYALTY AND ANTI-COMMUNIST OATH—BRITISH CITIZENS
AS COUNTY EMPLOYEES—CHAPTER 25046, ACTS 1949
THIS OPINION IS COMBINED WITH 049-243

To: *Honorable Park H. Campbell, Attorney, Board of County Commissioners, Miami, Florida:*

I enclose copy of opinion to the Board of Control relating to filing of the loyalty oath by certain teachers who are citizens of other states or countries. That opinion is equally applicable to employees of the county who may be citizens of Great Britain, Russia, Germany or any other country, friendly or otherwise. As pointed out in that opinion to the Board of Control, the matter of citizenship in the form of oath is merely a description of the person and the oath may be changed to recite the actual facts of citizenship. The same is not true in regard to the provision in the oath to the effect "I hereby solemnly swear or affirm that I will support the Constitution of the United States and the State of Florida." That, in my opinion is a vital part of the oath and if the employee cannot comply, he may not be continued in employment.

July 5, 1949—049-295.

LOYALTY AND ANTI-COMMUNIST OATH—PAUPERS NOT RE-
QUIRED TO TAKE—§§876.05-876.10 F. S.

QUESTION: The Bay County Board of County Commissioners pay five dollars per month to between seventy-five and one hundred persons who are listed on the County Pauper List. Under the provisions of Chapter 25046, Laws of 1949, is it necessary for this group of people to sign the loyalty oath?

To: *Honorable W. S. Weaver, Clerk of the Circuit Court, Bay County, Panama City, Florida:*

It is my opinion that it is not necessary for the recipients of the funds described in your question to file the loyalty oath required by Chapter 25046, Laws of 1949.

July 15, 1949—049-320.

LOYALTY AND ANTI-COMMUNIST OATH—PAUPER NOT RE-
QUIRED TO TAKE—§§876.05-876.10 F. S.

QUESTION: Whether or not persons receiving more than \$5.00 per month on the county pauper list should be required to file the loyalty oath, i. e., should loyalty oaths be required of persons receiving county relief?

To: *Honorable George J. Dykes, Clerk of the Circuit Court, Tavares, Lake County, Florida:*

In reply to the foregoing question, the act requiring the loyalty oath, (Chapter 25046), does not apply to paupers receiving county relief in any amount.

August 2, 1949—049-357.

**WORKMEN'S COMPENSATION PAY ROLL CASES—LOYALTY
OATHS—CHAPTER 25046, ACTS OF 1949—NOT APPLICABLE**

QUESTIONS: 1. Does Chapter 25046, Acts of 1949, apply to Workmen's Compensation pay roll cases?

2. For example if a person employed with the State Road Department had been terminated prior to the effective date of the above act and such termination was due to a compensable injury, would it be necessary for the injured person to sign a loyalty oath before he was eligible to receive payment under Workmen's Compensation Act?

To: *Honorable Alfred A. McKethan, Chairman State Road Department:*

.....

Both questions require a negative answer.

August 15, 1949—049-388.

**LOYALTY AND ANTI-COMMUNIST OATHS—DAY LABORERS—
CHAPTER 25046, ACTS 1949—APPLICABLE**

QUESTION: Does Chapter 25046, Laws of 1949, require that the Loyalty and Anti-Communist Oath be filed by day laborers employed by the various departments or agencies of the State of Florida?

To: *Honorable C. M. Gay, State Comptroller:*

In addition to others, the act covers all public "employees." A day laborer working for a public agency is undoubtedly a public employee, and a person employed at so much per day, but who is more or less regularly employed, would be covered by the act. On the other hand, a casual day laborer, a day laborer employed occasionally for a day or two only, would not come within the intent of the act.

August 15, 1949—049-392.

**LOYALTY AND ANTI-COMMUNIST OATH—HARBOR MASTER—
CHAPTER 25046, ACTS 1949—APPLICABLE**

QUESTION: Does Chapter 25046, Laws of 1949, require a harbor master, appointed for a port in the State of Florida, to execute the oath required by that law?

To: *Honorable William P. Head, Harbor Master, Port of Jacksonville, Florida:*

.....

..... Your question is answered in the affirmative.

February 13, 1950—050-62.

**LOYALTY OATH—PARTY OFFICE CANDIDATE—PUBLIC OFFICER
—DEFINITION—COMMUNIST OATH—CHAP. 25046,
LAWS OF 1949**

QUESTION: Must a candidate for the party office of member of a political party committee, such as member of a county democratic executive committee, take the loyalty oath required by Chapter 25046, Laws of Florida, Acts of 1949?

To: *Honorable R. A. Gray, Secretary of State:*

.....

In the absence of a court ruling upon this subject, and in view of the intent and purpose of Chapter 25046, reasonably the words "all candidates for public office" appearing in the title and body of said act should be construed to include candidates for party offices. Hence, the question is answered in the affirmative; that is to say, that a candidate for the party office of member of a political party committee, such as a member of a county democratic executive committee, should take the loyalty oath required by Chapter 25046 and file such oath at the time he files his other qualifying papers as such candidate.

August 25, 1950—050-421.

MUNICIPALITIES—SUBVERSIVE ORGANIZATIONS—ORDINANCES
REGULATING PUBLIC ACTIVITIES ALLOWED—
CHAPTER 876, FLORIDA STATUTES

QUESTION: May a municipality enact an ordinance prohibiting the use of its streets and public buildings by organizations, whose primary objective is the overthrow of orderly, constitutional and representative government by violence or other unlawful means?

To: *Honorable J. C. Rogers, City Attorney, Lakeland, Florida*
Messrs. Sanders & McEwan, City Attorneys, Orlando, Florida:

.....

I conclude that a municipality may in the exercise of its police power enact reasonable ordinances regulating the public activities of subversive organizations.

Hence, the question is answered in the affirmative.

December 5, 1950—050-543.

ELECTED OFFICIALS—LOYALTY OATH REQUIREMENTS—
C. 25046, ACTS 1949 APPLICABLE

QUESTION: Should persons who have been elected to public office execute and file the loyalty oath required by Chapter 25046, Laws of 1949, if as candidates for the respective offices to which they were elected they filed such oath?

To: *Honorable Jess Mathas, Clerk, Circuit Court, Volusia County, De-
Land, Florida:*

.....

..... the question is properly answered in the affirmative.

CRIMINAL PROCEDURE

ARRESTS

February 8, 1949—049-47.

ARRESTS WITHOUT WARRANT—HEARING ADJACENT DISTRICT —RETURNABLE TO ORIGINAL TERRITORIAL JURISDICTION

QUESTION: When an officer has arrested a person without warrant for an offense committed in a justice district, and the justice of the peace of such district is absent or unable to act, may the justice of a neighboring district issue warrant for such person's arrest upon said officer's appearing before such justice and making due complaint, setting forth the offense for which such person was arrested?

To: *Honorable Glen Darty, Justice of the Peace, District 3, Lake Wales, Florida:*

..... it appears that if the justice of the justice district where the offense is alleged to have been committed by the person arrested is absent or unable to act and the justice of an adjacent district is the nearest and most accessible magistrate, such last named justice properly may receive the complaint and issue warrant, for such person's arrest. The case, however, should be made returnable before the court having territorial jurisdiction of the offense charged (Section 901.01, Florida Statutes, 1941).

March 21, 1949—049-112.

COUNTY JUDGES—WARRANTS SIGNED BY CHIEF CLERK NO AUTHORITY FOR

QUESTION: May a county judge qualify his chief clerk to sign warrants for arrest issued in criminal matters coming before him?

To: *Honorable O. Frank Scofield, County Judge, Inverness, Florida:*

.....
The above question is answered in the negative.

November 3, 1949—049-542.

JUSTICES OF PEACE—CONSTABLES—FEES—APPEARANCE, BAIL BOND—SEARCHES—SEIZURES—AUTHORITY—§§901.03, 933.02, 933.07, FLORIDA STATUTES

QUESTIONS: 1. (a) Does a constable in Duval County have authority to fix and approve appearance or bail bonds?

(b) If so, who would the bond be returnable to—the justice of the peace or constable?

2. (a) In Volusia County does the justice of the peace having trial jurisdiction, have authority to fix and approve bonds?

(b) If so, who is entitled to the fee for approving the bonds?

3. Has a constable or a deputy constable authority to make arrests, and searches and seizure concerning illegal possession or sale of moonshine whiskey?

4. May a constable also be or act as a deputy sheriff and be on the sheriff's pay roll?

To: *Mr. W. H. Rosier, Secretary, Justice of the Peace-Constables Association, P. O. Box #2452, Jacksonville, Florida:*

In the absence of a local or population act on the subject, applicable to Duval County, of which I find none, the general law will apply. Section 901.03, Statutes of 1941, requires the court issuing a warrant of arrest to endorse on the back of the warrant the amount of bail in cases where the offense is bailable as of right. I concur in an opinion issued by my predecessor, under date of January 23, 1947, Biennial Report of 1947-48, page 597, wherein he held that a constable may approve a bail bond when the amount, in pursuance of Section 901.03, has been endorsed on the warrant properly in his hands for execution. To same effect, see also, Biennial Report, 1935-36, page 276.

The foregoing circumstances appear to be the only instance in which a constable in Duval County has authority to approve appearance or bail bonds.

It does not appear that a constable has authority to fix the amount of a bail or appearance bond.

When a constable takes a bond under the above stated circumstances, such bond should be made returnable to the court before whom the warrant is returnable. Ordinarily, a warrant is made returnable before the court which issues it, but not always. (See, for example, Section 37.03, Florida Statutes).

Referring to your second question, I find no local or population act on this subject applicable to Volusia County and, therefore, construe the general law. A justice of the peace who has trial jurisdiction has authority to fix and approve bonds in cases before him. The rule is that the officer who lawfully approves the bond is entitled to the fee. Accordingly, if the justice of the peace has trial jurisdiction and approves the bond, he is entitled to the fee.

Section 933.02 designates the occasions on which a search warrant may be issued by the proper court. This includes authority to issue the search warrant when property is being held or possessed in violation of any of the laws prohibiting the manufacture, sale and transportation of intoxicating liquors.

Section 933.07 provides that "the search warrant shall be issued to any sheriff and his deputy or any constable police officer or other person authorized by law to execute process." The authority will extend to a deputy constable when acting within his limited authority. This is in answer to your third question.

In an opinion of March 22, 1949, No. 049-116, I concurred in several opinions of my predecessors holding that a constable could not lawfully act as deputy sheriff.

January 13, 1950—050-22.

CONSTABLES—ARREST IN MUNICIPALITY—DISPOSITION OF PRISONER—ARREST WITHOUT WARRANT—JURISDICTION OF CONSTABLE—§901.15, F. S. '41

QUESTIONS: 1. Is a constable authorized to make arrests without a warrant on traffic violations occurring within the corporate limits of a municipality; if so, is the offender to be tried in Justice of the Peace court or Municipal Court?

2. Is a constable authorized to make arrests without a warrant on all misdemeanors occurring in his presence within his district?

3. Does a constable have any jurisdiction outside the Justice of the Peace district in which he operates?

To: Hon. G. Earl James, Municipal Judge, Ft. Lauderdale, Florida:

.....

..... Arrests made by constables, pursuant to the above section of the statute, for violations of municipal ordinances in their presence as provided by said section are nevertheless arrests for violation of municipal ordinances and are subject to trial in *municipal courts* and not in courts of justice of the peace or other state or county courts. Persons so arrested should be turned over to the chief of police or other municipal officer authorized to receive them. There are no fees provided for constables in connection with the making of such arrests. The authority for the making of such arrests is granted constables, but no provision is made for paying them for making such arrests. Such should be made within the corporate limits. The constable's authority in making such arrests is no greater than that of a policeman. This answers the first above question.

The second question should be answered in the affirmative upon authority of above mentioned Section 901.15, Florida Statutes.

In the absence of statute a constable has no jurisdiction beyond his district; however, there are certain statutory grants of authority which may authorize certain official acts of constables beyond their districts, which we will not here attempt to list. Any specific question in this connection should be presented by separate request. This seems to be a general answer to the third question.

March 30, 1950—050-163.

CONSTABLES—NO LAW GRANTING IMMUNITY TO ARREST—DEPUTY SHERIFF VESTED WITH AUTHORITY

QUESTION: Does a deputy sheriff have authority to arrest a constable?

To: Honorable Till Fannin, Constable, Walton County, Freeport, Florida:

.....

Your question is therefore answered in the affirmative.

April 1, 1950—050-171.

CONSTABLES—NONRESIDENT COUNTY—JURISDICTION TO
SERVE WARRANT—RETURN PRISONER—§901.07(2),
FLORIDA STATUTES

QUESTION: Does a Constable have authority on warrant issued from Justice of Peace Court of his district where crime was committed to serve such warrant on an accused in a county other than where crime was committed, and return accused to court from which warrant issues?

To: Honorable J. C. Jackson, Constable, Cottondale, Florida:

.....

..... The making of an arrest upon such a warrant must be done by the constable or sheriff of the county where the prisoner is to be found. This is compulsory procedure in all cases except where a peace officer in a jurisdiction where a crime has been committed is in hot pursuit of the accused at which time the peace officer may follow the accused into any county of his state.

Therefore, the prisoner having been arrested in a county where found by peace officer of that county on authority of a warrant issued from county where the alleged crime was committed, the established procedure has been for the arresting officer of the court issuing the warrant, to go to the county where the accused is held in custody and return said accused to court issuing warrant.

.....

August 21, 1950—050-408—047-9—050-127—050-301.

CONSTABLES—CRIMINAL CASES—APPEARANCE BONDS—FEES—
§§30.23, 901.03(7), FLORIDA STATUTES

QUESTIONS: (1) Does a constable have statutory authority to approve appearance bonds in criminal cases?

(2) If so, is a constable entitled to a statutory fee of \$2.00?

To: Hon. Harry A. Johnston, County Attorney, Board of County Commissioners, West Palm Beach, Florida:

The first question was discussed in opinion number 047-9, Attorney General's Biennial Report 1947-48, rendered by this office January 23, 1947, which was supported by opinion number 050-301, Attorney General's Biennial Report 1949-50, rendered by this office June 21, 1950.

.....

It is my opinion that although a constable has no statutory authority generally to take and approve appearance bonds in criminal cases instituted or pending in courts of county judges or justices of the peace or other committing magistrates, a constable does have such authority where the offense is bailable as of right and the amount of bail has been endorsed on the back of the warrant as provided in Section 901.03(7) and the warrant is properly in said constable's hands for execution.

Your second question is discussed in opinion Number 050-127, Attorney General's Biennial Report 1949-50, rendered by this office March 14, 1950, wherein a constable approves a bond under the circumstances as provided above.

Although a cursory reading of this opinion might appear in conflict with opinions 047-9 and 050-301, it is pointed out that the answer to opinion 050-127 was based on the assumption that the constable approved the bond under limited authority as pointed out above. Under said circumstances, a constable is entitled to the \$2.00 statutory fee as provided in Section 30.23, Florida Statutes.

.....

December 11, 1950—050-554.

**MUNICIPAL POLICE OFFICERS—ARRESTS—VIOLATIONS OF
STATE LAWS—LIABILITY—PENSACOLA, CITY OF**

QUESTIONS: 1. "In an automobile accident in which one person is clearly at fault, and the police officer arrests both drivers, is the officer or department liable for false arrest?"

2. "If in an automobile accident evidence gives (sic) that possibly one driver is at fault, and the police officer arrests both drivers, is the officer or department liable for false arrest?"

To Honorable Edward F. Wicke, Assistant City Attorney, Pensacola, Florida:

.....

..... The rule is well settled that a municipal corporation is not liable for false imprisonment committed by its policemen unless liability is imposed by the city charter or other statute. You will, of course, know whether the Charter of the City of Pensacola imposes such liability. I have found no general statute imposing such liability.

BAIL

January 20, 1949—049-22.

**PROFESSIONAL BONDSMAN—LEGALITY TO ENTER A PLEA OF
GUILTY—MISDEMEANOR**

QUESTIONS: 1. Does a professional bondsman who makes bond for a prisoner have the authority to plead guilty on a misdemeanor for the prisoner?

2. Does an individual making bond for a prisoner have the authority to enter a plea of guilty on a misdemeanor for the prisoner for whom he made bond?

To: Honorable Alex D. Littlefield, Sheriff, Volusia County, DeLand, Florida:

.....

Therefore both of your questions must be answered in the negative.

September 28, 1949—049-455.

STATE ATTORNEY—JURISDICTION—HABEAS CORPUS PROCEEDINGS—BAIL—WRITTEN NOTICE REQUIRED—
CHAPTER 903, FLORIDA STATUTES

QUESTIONS: 1. Is notice to the State Attorney prerequisite for hearing as to amount of bond releasing petitioner in habeas corpus proceedings pending hearing on merits of the petition?

2. Is notice to the State Attorney prerequisite to hearing on the merits of a petition for writ of habeas corpus?

3. May a defendant at liberty under bond surrender to custody and claim illegal detention for the purpose of bringing habeas corpus proceedings without first securing cancellation of the obligations of the bond and releasing the bondsman or surety company on his bond?

4. Where the sheriff on whose behalf a return to a writ of habeas corpus is to be filed is represented by private counsel, may the State Attorney file a return to the Writ and thereafter give notice and force a hearing on the merits of the petition for writ of habeas corpus?

To: Honorable Walter W. Woolfolk, State Attorney, Lake Wales, Florida:

.....

..... it is my opinion that the first question is answered in the affirmative.

As to Question 2: I seriously doubt that notice to the State Attorney is a necessary prerequisite to a hearing on the merits in such a habeas corpus action. (See *Johnson v. Lindsey*, 103 So. 419). In other words, I am of the opinion that the Circuit Court had jurisdiction to proceed without notice to the State Attorney. However, since courts are properly desirous of seeing to it that the State's interests are represented as contemplated by law, it is quite proper and in order for the court to require that notice be given to the State Attorney before holding a hearing in any case which it is the State Attorney's duty to defend as aforesaid.

As to Question 3. . . . The question involved in habeas corpus proceedings is as to whether the detention is illegal, and, if it is actually illegal, the fact that the prisoner has not procured exoneration of his sureties as provided for by statute does not render it any the less illegal. The fact that the prisoner is detained in custody gives him the right to challenge that detention by habeas corpus.

As to Question 4: Section 79.04, Florida Statutes requires that the return to a writ of habeas corpus be made by "the person on whom the writ shall be executed," i.e., by the respondent. Therefore, the State Attorney cannot file a return in his own name when the sheriff is the respondent. However, as above indicated, I think that when a sheriff receives a writ in a habeas corpus case in which he is the respondent, and in which the legality of detention to answer criminal charges is involved, and which is the State Attorney's duty to defend as aforesaid, it is the sheriff's duty to promptly place the defense of the case in the hands of the State Attorney so that he can protect the State's interests. And, as also indicated above, it is proper

and in order for the court to require that the State Attorney be given notice in such cases so that he can perform this duty.

January 21, 1950—050-27.

APPEARANCE BOND MONEY—REAL ESTATE BOND—DISPOSITION
OF MONEY—§903.26, F. S. '41

QUESTION: When a committing magistrate, in this case a Justice of the Peace, had held a defendant to answer a criminal offense in the Criminal Court of Record of Broward County and the defendant is bailable as of right and is admitted to bail by posting a cash bond for his appearance in the aforesaid Court, to which court official should the committing magistrate transmit the appearance bond money?

To: *Hon. W. E. Bunch, Jr., Clerk, Broward County Criminal Court of Record:*

.....
..... it is my opinion when the case is docketed in the Criminal Court of Record, the bond money should be deposited with the Clerk of that Court so as to be there present when it becomes necessary to deal with it, whether it be forfeited, or the return thereof be demanded, if no default or conviction occurs.

February 7, 1950—050-52.

JUSTICE OF THE PEACE—POWER TO GIVE BAIL—POLICE
COURT—§903.07, F. S. '41

QUESTION: Is there any provision, statute or ruling which would prevent the Justice of the Peace of one district from becoming an agent for a bonding company and writing bonds in municipal courts, other justices' district or any case wherein he did not participate or assume any official duties such as issuing affidavits, warrants, commitments or having any hearing?

To: *Honorable Glen Darty, Justice of the Peace, Lake Wales, Florida:*

.....
In my opinion, a justice of the peace is not prohibited by Section 903.07 from executing bail bonds furnished for violations of city ordinances as agent of a surety company. However, the provisions of the statute reasonably prohibit him from furnishing bail with respect to violations of the criminal laws of the state in such an agent's capacity.

February 13, 1950—050-73.

COMMON LAW RULES—BAIL BOND FORFEITURE—EFFECT OF
RULES—SPECIAL STATUTORY PROCEEDING—§§25.47,
903.26, 903.28, COMMON LAW RULE 61

QUESTION: Since the effective date of the Florida Common Law Rules, recently adopted by the Supreme Court of this state, should the proceeding for the enforcement of forfeited bail bonds be in accordance with the statutes or be governed by said common law rules?

To: Honorable Robert R. Taylor, County Solicitor, Miami, Florida:

.....

In the light of the above authorities and observations we feel that the courts will very probably construe the proceeding in question as being a special statutory proceeding to which said new common law rule 61 will apply and, as the statute does not set out the details of procedure, the procedure provided by the rules may be followed. This paper should not be construed as an opinion of this office upon the question but as being in the nature of a brief upon the question with comments. The question in its last analysis is a judicial one for the courts.

May 1, 1950—050-224.

**PROFESSIONAL BONDSMEN—REGISTRATION—INSURANCE
COMMISSIONER—CLERK CIRCUIT COURT**

QUESTION: Do the laws of Florida require a professional bondsman to qualify with the clerk of the circuit court and the Insurance Commissioner of Florida before doing business in this state?

To: Honorable J. Edwin Larson, Insurance Commissioner:

.....

A professional bondsman as defined in Section 903.10 must register with the clerk of the circuit court in the manner and as contemplated by Section 903.11. Such a bondsman is not required to qualify in any manner with the Insurance Commissioner of Florida.

June 21, 1950—050-301.

JUSTICES OF PEACE COURTS—CONSTABLES—BAIL BOND APPROVAL—§903.34 (2), FLORIDA STATUTES

QUESTION: Does the constable have the authority to approve appearance bond in criminal cases instituted in the justice of the peace court and made returnable to the county judge's court?

To: Honorable A. B. Tidwell, Constable, Marianna, Florida:

.....

..... it is my opinion that a constable has no statutory authority to take and approve appearance bonds in criminal cases instituted or pending in courts of county judges or justices of the peace or other committing magistrates, except where a warrant upon which the amount of bail to be accepted has been indorsed in compliance with Section 901.03 (7) Florida Statutes, and is properly in constable's hands for execution.

.....

Therefore, the answer to your question is in the negative subject to the above exception.

This opinion is supported by an earlier opinion rendered by this office on January 23, 1947, Opinion Number 047-9, Attorney General's Biennial Report 1947-48, copy attached.

Note: See also opinion No. 050-408.

December 18, 1950—050-564.

PROSECUTING ATTORNEYS—BAIL BONDS—PRINCIPAL AND SURETY—NOTICE—§903.28, FLORIDA STATUTES

QUESTIONS: 1. In proceeding under Section 903.28, F. S., to enforce a bail bond secured otherwise than by the deposit of money or bonds, may the prosecuting attorney proceed against both the principal and the surety?

2. In whose name should such proceedings be instituted and judgment taken?

3. In such proceedings, is it necessary to give notice to the persons against whom judgment is sought?

To: *Honorable Z. D. Giles, County Prosecuting Attorney, Leesburg, Florida:*

AS TO QUESTION ONE

..... the principal and all sureties may be proceeded against under Section 903.28.

AS TO QUESTION TWO

..... this statutory provision (§142.03) requires that the proceedings be instituted in the name of the party for whom judgment is required to be entered, viz., the State for the use of the particular county.

AS TO QUESTION THREE

..... when they execute a bail bond, they waive notice of application for judgment thereon.

INDICTMENT AND INFORMATION

June 16, 1950—050-296.

CRIMINAL COURT OF RECORD—INFORMATION—FORM 2 LEGALLY SUFFICIENT—ORANGE COUNTY

QUESTION: Is it necessary for an information to state:

Form 1

"Presented by the County Solicitor and Filed

....., 19.....

.....
CHAS. E. LIMPUS
Clerk of the Criminal Court of Record

By D. C.

O. RAYMOND ELLERS
County Solicitor"

or is the following form legally sufficient:

Form 2

"FILED IN OFFICE
Criminal Court of Record and
County Court, Orange Co., Fla.
1950 MAY 16 AM 10:35

CHAS. E. LIMPUS, CLERK
BY D.C."?

To: *Honorable Charles E. Limpus, Clerk, Criminal Court of Record,
Orange County, Orlando, Florida:*

.....

Therefore, it is my opinion that it is not necessary to use form 1 and that form 2 is legally sufficient.

PROCESS UPON INDICTMENT AND INFORMATION

June 16, 1950—050-293.

ARRESTS—INFORMATION—CAPIAS SERVICE—SECTIONS 907.01,
907.02, 907.04, FLORIDA STATUTES APPLICABLE

QUESTIONS: 1. When a case has been certified from the Justice of the Peace Courts to the County Court, and an information has been issued in the County Court, should the clerk of the County Court issue a capias?

2. If so, should the sheriff serve this capias?

To: *Honorable Dale M. Leslie, Clerk of the Circuit Court, Madison, Florida:*

.....

..... in the question which you have propounded, the accused has already been certified by the justice of the peace to the county court, which means that the accused is either in custody or released on bail and in such case there would be no need for any capias to be issued, as the original bond would still be binding.

As to your second question, the capias or warrant is directed to all and singular, the sheriffs and constables of the State of Florida. It shall be executed only by the sheriff or constable of the county in which the arrest is made (Section 901.04, Florida Statutes).

In answer to your second question, although the sheriff shall serve the capias if so directed, the authority is not exclusively with the sheriff alone, as pointed out by Section 901.04, supra.

MOTION TO QUASH AND PLEAS

November 23, 1949—049-558.

COUNTY COMMISSIONERS—COUNSEL FEES—INDIGENT DEFENDANT—MANSLAUGHTER CHARGE

QUESTION: Where an attorney is appointed by the Court to represent an indigent defendant charged with manslaughter, and such defendant enters a plea of guilty upon the advice of such attorney

ney, thereby saving the county the expense of a trial, can the Board of County Commissioners lawfully pay a reasonable fee to such attorney for such representation?

To: Honorable Paul E. Sawyer, Legal Adviser to Board of County Commissioners, Key West, Florida:

.....

Therefore, your question must be answered in the negative.

JUDGMENT AND SENTENCE

April 22, 1949—049-175.

BOND—FINE AND COSTS—DEFENDANT—SURRENDER—NO AUTHORITY—BONDSMEN

QUESTION: Where a defendant posts a fine and cost bond, under Section 921.15, Florida Statutes, 1941, but is subsequently arrested and imprisoned on another charge, may his bondsmen surrender him and have their bond discharged prior to the expiration of the ninety days mentioned in the said statute?

To: Honorable J. F. Kirk, Sheriff, Palm Beach County, West Palm Beach, Florida:

.....

..... I find no authority in the law which permits or authorizes the bondsmen to surrender their principal prior to the expiration of the ninety days period mentioned in the statute without his consent.

The above question should, therefore, be answered in the negative. Any former opinion of the attorney general which may appear to hold otherwise is hereby overruled.

June 29, 1949—049-282.

COUNTY JUDGES—NOT ENTITLED FEES CRIMINAL CASE DISMISSED—WARRANT NOT SERVED

QUESTION: CHAPTER 25070, Laws of Florida, Acts of 1949, provides in effect that County Judges in those counties having a County Judge's Court shall be allowed a fee in each criminal case of \$7.50 in lieu of all other fees heretofore charged with certain exceptions not here relevant; and that such fee shall be considered as earned "upon entry of final judgment order" in such case. In a case where warrant was issued and case was docketed, but later dismissed for some reason without the warrant ever having been served, and order was entered on the docket dismissing the case, would the County Judge be entitled to such fee provided in Chapter 25070?

To: Honorable Monroe W. Treiman, County Judge, Hernando County, Brooksville, Florida:

..... the question is answered in the negative; that is to say, that an order dismissing a criminal case under the circumstances stated would not constitute a "final judgment order" as such quoted words are used in Section 5 of said Act.

(Note: This opinion modified by 049-381)

January 25, 1950—050-33.

**BOND AND PROCEEDINGS—DEMAND ON SURETY—DEFENDANT
IN PRISON—§921.15, F. S. '41**

QUESTION: When a defendant, upon being sentenced to pay a fine, delivers to the sheriff a 90-day bond for the same and is released from custody, and at the expiration of the 90 days is serving a one-year sentence imposed in another county during the 90 days, is the surety on the bond obligated to pay the amount of the fine?

To: Frank M. Williams, Sheriff of Polk County:

.....

The surety is not relieved of his obligation to pay the bond at the expiration of the 90 days, nor of his liability to be proceeded against as above outlined, by the fact that Section 921.15 also makes the defendant liable to be proceeded against as if no bond had been given or by the fact that the defendant is incarcerated in another county jail and cannot surrender himself to or be taken into custody by the sheriff who accepted the bond.

April 5, 1950—050-178.

**SHERIFFS'—APPROVAL BOND—LIABILITY—ESCAMBIA COUNTY
§921.15, FLORIDA STATUTES APPLICABLE**

QUESTIONS: 1. Where a person is committed to Escambia County jail, and a resident of another county signs as surety for a fine and cost bond of such person, is the sheriff of Escambia County responsible for the collection of said bond, although said bond was approved by the sheriff of said other county?

2. Is the Sheriff of Escambia County entitled to the approving bond fee although said bond was approved by the sheriff of another county?

3. In case of default in payment of said fine and cost bond, should suit be filed in Escambia County or in said other county?

4. If judgment obtained on said bond remains unsatisfied, is the Sheriff of Escambia County personally obligated to pay such judgment?

5. If any fine and cost bond becomes default and remains unsatisfied, should the amount of bond be charged against the sheriff who approves said bond?

To: Honorable R. L. Kendrick, Sheriff, Escambia County, Pensacola, Florida:

.....

..... Your first question is, therefore, answered in the affirmative.

In answer to your second question, the circumstances upon which the sheriff of said county may have approved said bond are not explained by your letter. If the prisoner was in jail in Escambia County, then the so called approval by the sheriff of said other county was not an official approval. In that case, if the Sheriff of Escambia County failed to approve said bond it would appear that neither

sheriff is entitled to the statutory fee for approval of said bond. In no case shall there be more than one fee paid for approval of a bond. As a practical matter the sheriff of a county in which the defendant has been convicted should approve all bonds made after commitment of the defendant because he has custody of the defendant and should handle procedure connected with the release upon bond. I refer you to page 63 of the Florida Sheriff's Manual for further explanation. Circumstances might require that the bond be otherwise approved in some cases.

In answer to your third question, according to the provisions of Section 2 of the above statute, the procedure for collection in forfeiture of bond is commenced in a county in which judgment was rendered. It, therefore, stands that any proceeding for collection of forfeiture of the bond in such cases should be commenced in Escambia County. For further explanation I refer you to pages 94 and 95 of the Florida Sheriff's Manual.

.....
..... the answers to your fourth and fifth questions are in the negative. For further explanation I refer you to page 67 of the Florida Sheriff's Manual.

APPEALS

February 10, 1950—050-61.

COPIES OF BRIEF—CONFLICT OF RULE AND LAW—SUPREME COURT RULE ON APPEAL—TRANSCRIPT OF REPORT §§924.23, 924.25, F. S. '41, SUPREME COURT RULE 37

QUESTIONS: 1. When an appeal to the Supreme Court is taken in a criminal case, should the Clerk of the trial court forward the original and two copies of the appeal record to the Supreme Court, or should he transmit only the original to the Supreme Court and deliver a copy to the Attorney General and a copy to the appellant's attorney?

2. When an appeal to the Supreme Court is taken in a criminal case, should the court reporter file an extra copy of his transcript of the trial proceedings with the clerk of the trial court, to be retained by such clerk in his file of the case?

To: *Honorable E. B. Leatherman, Clerk of Circuit Court, Dade County:*

AS TO QUESTION 1.

.....
It is customary to follow Supreme Court Rule 37, rather than Section 924.25. My understanding is that the Supreme Court doesn't want any copies. Therefore, I suggest that you follow the Rule by sending up only the original and by delivering one copy to the Attorney General and one copy to the appellant's attorney.

AS TO QUESTION 2.

.....
Therefore, I suggest that Supreme Court Rule 37 be followed and that no extra copy of the court reporter's transcript be filed for retention by the clerk of the trial court, unless the trial court should

desire that such extra copy be filed in a particular case and should so order.

PROVISIONS SUPPLEMENTAL TO CRIMINAL PROCEDURE LAWS

June 24, 1949—049-281.

MUNICIPAL COURT—REVOCATION OF LICENSE—DRUNKEN DRIVING—§322.25—SUSPENDED ON APPEAL AND SUPERSEDEAS

QUESTION: A defendant is convicted in a municipal court for the offense of driving a motor vehicle while under the influence of intoxicating liquor. He files a notice of appeal and obtains a supersedeas by posting bond in accordance with Section 932.52, Florida Statutes 1941, as amended by Chapter 24068, Laws of 1947. Does such appeal and supersedeas suspend the operation of that provision of Section 322.25, Florida Statutes 1941, which requires said Court to revoke the driver's license of such defendant upon such conviction?

To: *Hon. R. Lee Freeman, Municipal Judge, New Smyrna Beach, Florida:*

.....

It is my opinion that a person is not "convicted" within the meaning of said statute where he has an appeal pending and has perfected supersedeas.

..... your question must be answered in the affirmative.

SEARCH WARRANTS

November 10, 1949—049-545.

SHERIFFS—POLICE OFFICERS—MOTOR VEHICLES—CONTRA- BAND ILLEGAL LIQUOR—SEARCHES WITHOUT SEARCH WARRANT—§933.19, FLORIDA STATUTES APPLICABLE

QUESTIONS: 1. Under what circumstances may a sheriff or other police officer stop and search a motor vehicle for contraband or illegal liquors, without a search warrant, under the provisions of Section 933.19, Florida Statutes?

2. Where a sheriff or other police officer stops and searches a motor vehicle for contraband or illegal liquors, without a search warrant, under the provisions of Section 933.19, Florida Statutes, may he be required to divulge the information upon which the search was predicated and give the names of any informants?

To: *Honorable Ernest F. Barnes, Sheriff, Jackson County, Marianna, Florida:*

.....

Under the above rule if an officer has reliable information that a certain vehicle is carrying contraband liquor, but there is insufficient time to obtain a search warrant based upon such information, he will be authorized, under Section 933.19, Florida Statutes, to stop and search such vehicle. To justify the stopping and searching of such a vehicle for non-tax paid liquor the searching officer's information

should be of the same degree as that required for the issuance of a search warrant by a judicial officer. There must be "probable cause" justifying a search without a warrant just as there must be "probable cause" justifying the issuance of a search warrant. In any criminal proceeding growing out of evidence obtained by such a search the officer may be called upon to justify his search and if he is unable to show the required "probable cause" the evidence obtained by the search may not be admitted in the trial. Just as in the case of the issuance of a search warrant the court has the authority to investigate the validity of the search and for that purpose may require that the officer show "probable cause" for the search. A search without "probable cause" might also subject the officer and his bondsmen to an action in tort. See also 48 C.J.S. 634, Section 394. These observations seem to answer the first question.

. In the case of *Scher V. United States*, 305 U. S. 251, 59 S. Ct. 174, 83 L. Ed. 151, text 154, a case involving the search of a vehicle for liquor, the court remarked that "as often pointed out, public policy forbids disclosure of informer's identity *unless essential to the defense*, as for example, where this turns upon an officer's good faith," citing certain opinions of federal circuit courts of appeal. In this connection see also annotations in 83 L. Ed. 155 and in 59 A. L. R. 1559 and cases therein cited. The question of whether or not such information should be disclosed seems to center around the question as to whether or not the information may be essential to the proper defense of the accused. Whether or not it is essential will probably depend upon the circumstances in each case. This being true no definite answer may be made to the second question.

January 14, 1950—050-29.

ISSUANCE OF WARRANT—BEVERAGE DEPARTMENT—CIGARETTE TAX LAW—§§933.07-8, 561.06-07, F. S. '41

QUESTION: May a search warrant, issued in connection with the enforcement of the state beverage laws, or in connection with the enforcement of the state cigarette taxing laws, be directed to and served by enforcement agents of the state beverage department?

To: Hon. Lewis M. Schott, Director, State Beverage Department:

.
Although the above question is one to be answered by the magistrate to whom application is made in the first instance, and is therefore a judicial question, we feel that as beverage department supervisors "have all the powers of deputy sheriffs in the enforcement of the beverage laws and the cigarette tax laws of this state, and in the prosecution of offenders against such laws" (Section 561.07, Florida Statutes) they are "persons authorized by law to execute process" (in connection with the enforcement of the beverage and cigarette tax laws of this state) within the purview of Section 933.07, Florida Statutes. This is a conditional answer of the above question. This should not be taken as an express holding on the part of this office that such search warrants may be issued to beverage department supervisors, but merely a listing of reasons why we think that they may be so issued. The question is a judicial one to be determined by the courts, and not by the attorney general.

March 25, 1950—050-150.

JUSTICES OF PEACE—CONSTABLES—SEARCH WARRANTS—
TERRITORIAL JURISDICTION—§§933.01, 37.16,
F. S. '41 APPLICABLE

QUESTIONS: 1. Does the Justice of the Peace in District 3 of Bay County have the authority to issue a search warrant for a residence in District 11, knowing that such residence is in District 11, and that said District 11 has a Justice of the Peace who is available and maintains an office in said District 11?

2. Does the Constable have the authority to serve a search warrant outside of his own district if the district in which the search warrant was to be served has an active Constable?

To: Honorable A. L. Messer, Justice of the Peace, Lynn Haven, Florida:

.....

Therefore, your first question is answered in the negative.

As to your second question reference is made to Section 37.16, Florida Statutes, 1941.

This seems to indicate that a constable may make service of a warrant in any district of this county provided that he shall not be entitled to a greater mileage in any case in serving the writ than he would be if said writ was issued and served in a district in which said constable resides and for which he was elected.

INQUESTS OF THE DEAD

June 24, 1949—049-271.

COUNTY JUDGES—AUTHORITY—INQUESTS—ABSENCE OF JUSTICES OF PEACE—LEGAL REASON

QUESTION: "I would like to know if Section 936.01 is an all inclusive section of the law dealing with Coroners, in other words, is there an older law not shown or repealed in the 1941 revised statutes which gives the County Judge original jurisdiction to hold inquest. My understanding of the above quoted section is that the County Judge only has jurisdiction of a secondary nature?"

To: Honorable Glen Darty, Justice of the Peace, District Three, Polk County, Lake Wales, Florida:

My predecessor, Honorable J. Tom Watson, rendered an opinion on the 26th day of October 1942, in the conclusions of which, I concur. Mr. Watson held as follows:

"Answering the direct question which you propound, however, it is my opinion that county judges do have authority to hold inquests under the circumstances named in the statute, i.e., when the appropriate justice of the peace is unable for any legal reason to do so, and that the question as to whether any legal reason exists depends upon the circumstances of the given case."

August 14, 1949—049-377.

COUNTY JUDGES—HOLDING INQUESTS—NO ADDITIONAL FEES
ALLOWED

QUESTION: Would the county judge, acting in his capacity as coroner, be entitled to a fee of five dollars for holding an inquest lasting two hours under the authority of Section 936.16, Florida Statutes?

To: *Honorable Hiram W. Bryant, County Judge, Lee County, Ft. Myers, Florida:*

.....

It is my opinion that the Legislature intended that judicial officers acting as coroners should receive the enumerated fees in said Section 936.16 for the holding of each inquest, and in the event any one inquest lasted for a greater length of time than one day; then, and in such event, the coroner would receive five dollars per day for each day or portion thereof, in addition to one that it might require to complete the inquest.

Your question, therefore, is answered in the negative.

December 3, 1949—049-572.

JUSTICES OF THE PEACE—AS CORONER—JURISDICTION—CHAPTER 936, FLORIDA STATUTES APPLICABLE

QUESTION: I request your opinion for future guidance on the following points involving the responsibilities of the coroner; the removal of a body from the scene of an accident; the signing of a death certificate by a doctor not in attendance at the time of death; the authority of a coroner to enforce cooperation from doctors, undertakers and law enforcement officers in cases involving the functioning of the coroner?

To: *Honorable E. R. Williamson, Justice of the Peace, Lake County, Leesburg, Florida:*

My predecessor, Honorable J. Tom Watson, in response to an inquiry from Honorable Bryan Willis, State Auditor, on the duties of a Coroner used the following language: See (1941-2 Biennial Report 778) in which I concur.

1. As to the removal of the body from the scene of the accident:

Where there is reason to believe that the death was caused by the criminal act or the criminal negligence of another the coroner should make an investigation as prescribed in Section 936, Florida Statutes Annotated, as amended by laws of 1943, Chapter 21965, and should be notified and given a reasonable opportunity so to do; and if the coroner determines that an inquest should be held, it should be done as prescribed by the cited statute, and especially Section 936.03, Florida Statutes as amended in 1943.

2. As to the signing of a death certificate by a doctor not in attendance at the time of death:

In only a few instances perhaps would a doctor be present at the time of the death, especially in cases of very serious injury; hence, it would become reasonably necessary to procure the death certificate from a doctor who was not present at the instant of death; and when this is the case, the certificate being the best that could be done would be valid.

3. As to the authority of the coroner to enforce cooperation from doctors, undertakers and law enforcement officers in cases involving the functioning of the coroner:

In such cases, cooperation should be readily accorded by the doctors, undertakers and law enforcement officers. In the event of persistent recalcitrance where either the public health is adversely affected, it should be reported to the Board of Health; where there is persistent interference with or prevention of the performance of the duties of the coroner, it should be reported to the Governor or the head of the road patrol, or the sheriff, whichever is the superior of the perpetrator.

You should bear in mind that your jurisdiction is not entirely exclusive, as the County Judge or the Justice of the Peace of the next nearest district may act, if you are not available for any reason.

January 25, 1950—050-39.

**CORONER'S JURY—FEMALE JURORS—GRAND AND PETIT
JURIES—§§40.01, 936.03, 936.04, F. S. '41**

QUESTION: Do the provisions of Section 40.01, Florida Statutes as amended, relating to the qualifications of jurors by providing for female jurors as well as male jurors except in eminent domain proceedings, apply to Section 936.03 and Section 936.04, Florida Statutes, relating to coroner's jury; and if applicable how should the juror's names be obtained from the clerk of the Circuit Court?

To: Hon. Sid M. Saunders, Constable, St. Petersburg, Florida:

.....

Your question is therefore answered in the negative.

February 18, 1950—050-78.

**JUSTICE OF THE PEACE—AUTHORITY TO HOLD INQUEST—
§936.03, FLORIDA STATUTES 1941**

QUESTION: Under what conditions is a justice of the peace authorized to hold an inquest?

To: Honorable J. O. Buck, Justice of the Peace, Apopka, Florida:

In reply to the inquiry contained in your letter of February 10, 1950, as to your authority to hold an inquest, I refer you to Section 936.03, Florida Statutes, as amended.

.....

The provisions of this statute requiring direction for holding of coroner's inquest by county judge, prosecuting attorney, or assistant prosecuting attorney to be attached to cost bill filed by justice of the

peace before it can be approved by county commissioners has been upheld in the Florida Supreme Court case 1948, of Cavagan v. Marshall, 33 So. Reporter 2d 862.

March 10, 1950—050-119.

JUSTICES OF THE PEACE—COUNTY JUDGES—INQUESTS OF THE
DEAD—DIRECTIONS—COSTS—§936.03, F. S. '41—
APPLICABLE

QUESTIONS: 1. Where a justice of the peace or county judge holds an inquest, without first obtaining a direction for the holding of such inquest as prescribed by Section 936.03, Florida Statutes, may such direction be extended after the inquest has been held and completed?

2. When a justice of the peace or county judge holds an inquest, without first obtaining a direction for the holding of such inquest as prescribed by Section 936.03, Florida Statutes, may the fees and costs of the sheriff or constable, the jurors and the witnesses be paid notwithstanding such want of direction?

3. If the answer to the last above question is in the affirmative, should such costs and fees be charged against the said justice of the peace or county judge holding the said inquest without the required direction?

To: *Honorable Arthur W. Newell, Clerk of the Circuit Court, Orlando, Florida:*

.....

..... The first question is, therefore, answered in the negative.

.....

..... The second question is, therefore, conditionally answered in the affirmative. If the county commissioners do not ascertain that the sheriff or constable, and the witnesses and jurors, had actual knowledge that the coroner was holding the inquest in violation of the statute, they should approve the payment of such costs.

.....

..... We doubt the authority of a board of county commissioners to deduct such an expenditure from fees due to the coroner in other matters without a judicial determination of the amount due by the officer by reason of such misconduct in office. This seems to answer the third question.

March 17, 1950—050-133.

CORONERS' INQUEST FEES—FUND PAID FROM—§§936.17, 129.03,
FLORIDA STATUTES APPLICABLE

QUESTIONS: 1. Out of what county fund should fees for coroners' jurors, witnesses, and autopsy be paid?

2. The fee for the physician who performs the autopsy?

To: *Honorable George J. Dykes, Clerk, Board of County Commissioners, Lake County, Tavares, Florida:*

Upon checking with the State Auditor's Office I find that the Comptroller has ruled that all fees incurred in coroners'

inquest, except that for autopsy or that of the physician performing the autopsy shall be paid from the general fund and charged to Item 36 entitled "Other Law Enforcement Expenses", Account No. 361. Therefore, your warrant should be drawn accordingly.

..... the fee of the physician for performing the autopsy and attending the coroners' inquest should be paid from the Fine and Forfeiture Fund.

July 21, 1950—050-355—050-78—050-119.

CORONERS—INQUESTS OF THE DEAD—EYEWITNESSES—§§936.02, 936.03, FLORIDA STATUTES APPLICABLE

QUESTIONS: 1 Where "A" is supposed to have killed "B", with no other person witnessing the killing, is "A" an "eyewitness" within the contemplation of Section 936.02, which permits inquests of certain deaths when there are no eyewitnesses?

2. Is a coroner's inquest necessary under the circumstances revealed in Question One, supra?

To: Honorable Roy Hamlin, Honorable Ira Albury, Justices of the Peace, Key West, Florida:

AS TO QUESTION ONE:

"A" could not be required to testify against himself at an inquest, because to require him to do so would violate his constitutional right against being compelled to incriminate himself. He is supposed to have been a participant in the killing, not a witness to it, and I do not think that he should be considered an "eyewitness" to what he, himself, did, within the contemplation of Section 936.02, for the purpose of determining whether that Section permits an inquest.

However, even though "A" is not to be considered an eyewitness, and even though there is no other eyewitness to the killing, still the coroner has no authority to hold an inquest unless he is directed to do so by the judge, the prosecuting attorney, or an assistant prosecuting attorney of a court having trial jurisdiction of felonies committed in the county where the dead body is found. (See Section 936.03; *Gavagan v. Marshall*, 33 So. 2d 862; enclosed copies of Attorney General's opinions 050-78, dated February 18, 1950 and 050-119, dated March 10, 1950).

AS TO QUESTION TWO:

By reason of the provisions of Section 936.03, an inquest is not to be considered necessary unless the coroner is directed to hold an inquest by the judge, the prosecuting attorney, or an assistant prosecuting attorney of a court having trial jurisdiction of felonies committed in the county. Section 936.03 deprives the coroner of authority to determine whether an inquest is necessary.

November 14, 1950—050-522, 050-39.

INQUESTS OF THE DEAD—JUSTICES OF THE PEACE AS CORONER—JURY LIST SELECTION—EXECUTION OF WARRANT—C. 936, and §40.10, FLORIDA STATUTES

QUESTION: May a justice of the peace, acting as coroner, select

a coroner's jury from a jury list prepared by the jury commission of the county instead of issuing a warrant directing the sheriff or constable, as the case may be, to summons said coroner's jury?

To: *Honorable Joseph G. Spicola, Justice of the Peace, Tampa, Florida:*

.....

Under the provisions set forth above (§936.03) it is clear that the function of summoning a coroner's jury is vested in the constable of the district or any constable of the county or the sheriff, as the case may be, and is not vested in the coroner or justice of the peace acting as coroner.

The subject matter of Sections 936.05 and 936.06, Florida Statutes, also, leads to the aforementioned conclusion.

An ancillary question to the one you raise is whether the officer directed to summons the coroner jury is required to use the jury lists prepared by the jury commission of the county or whether he may select jurors at random.

Section 936.04, Florida Statutes, seems to be controlling. It reads as follows:

"A coroner's jury shall consist of six good and lawful men of the justice's district wherein the dead body is found."

So long as the jurors selected by the officer directed to execute the coroner's warrant meet these requirements, I do not believe it is necessary that said jurors be selected from the aforementioned jury lists of the county jury commissioners.

In reaching this conclusion I am not unaware of the general statutory provisions (Section 40.09, et seq., Florida Statutes) relating to jury commissions in counties of certain populations. However, since the coroner's jury is purely advisory (See 1947-1948 Biennial Report of Attorney General, pages 601-602), I do not believe that the legislature intended to impose upon coroner's juries the limitations and restrictions of selection that they clearly intended for grand and petit juries (See opinion of this office No. 050-39, dated January 25, 1950, on a related subject; a copy is attached).

Also, the fact that the members of the coroner's jury must come from "the justices district wherein the dead body is found" would seem to make it impractical to use the jury lists prepared by the jury commissioners, for said lists are, as I understand it, prepared on a county wide basis (See Section 40.10, Florida Statutes).

In answering your question I have assumed that no Special Hillsborough County Act is applicable.

December 28, 1950—050-582.

STATE ATTORNEY—CORONER'S JURY—INQUESTS OF THE DEAD
—AUTOPSY—SECTIONS 936.02(4), 936.03, 936.11, FLORIDA
STATUTES APPLICABLE

QUESTIONS: 1. Does a coroner's jury have the right to have an autopsy performed upon the body of a person concerning whose death an inquest is being held?

2. Does the State Attorney have the legal right to authorize a physician to perform an autopsy on a dead body?

To: Honorable Archie Clement, State Attorney, Clearwater, Florida:

AS TO QUESTION ONE:

The general rule is that, since a coroner, while holding an inquest, is authorized to ascertain the truth concerning the death, he has authority in such cases to employ a physician to make an autopsy and ascertain the cause of death (13 Am. Jur. 115, Coroners, Section 15; 15 Am. Jur. 849, Dead Bodies, Section 28).

This rule is modified in Florida by Section 936.11, F. S. which provides in part that:

"Whenever a jury of inquest shall deem it necessary to have a physician in attendance to assist them in their examination, the coroner shall summon such physician. The jurors shall not request the coroner to summon a physician to assist them in their examination until after they shall have been empaneled and sworn and made an examination of the body, and then, not until they shall have come to the conclusion that it is absolutely necessary to have a physician to assist them in their further examination. No coroner shall summon a physician until he shall be requested as aforesaid . . ."

The stated purpose of this statute in permitting the summoning of a physician is "to assist them (the jurors) in their examination." Therefore, I think that when a physician is summoned in accordance with the statute, he is there to render the jurors such assistance as they may require, and that the jurors have the authority to direct him to assist them by performing an autopsy.

And, after the body is exhumed and viewed by the coronor's jury, and a physician summoned pursuant to Section 936.11, the coronor's jury may direct such physician to perform an autopsy just as though there had been no burial and exhumation.

I am of the opinion that a state attorney has no legal authority to authorize a physician to perform an autopsy.

However, the state attorney may, under the circumstances prescribed in Section 936.03, F. S., cause an inquest to be held for the purpose of affording a coronor's jury an opportunity to procure the summoning of a physician and the making of an autopsy

PROCEEDINGS IN COURTS OF COUNTY JUDGES AND JUSTICES OF THE PEACE

November 3, 1949—049-531.

JUSTICES OF PEACE—TRIAL JURISDICTION—CONVICTED PRISONERS TURNED OVER TO SHERIFFS

QUESTION: "Will you please advise me what steps to take to get a place to take care of prisoners in District No. 1, Laurel Hill, Florida?"

To: *Honorable A. L. Johnson, Justice of the Peace, Laurel Hill, Florida:*

..... where you have trial jurisdiction resulting in a conviction, the prisoner should be turned over to the sheriff with a commitment or other appropriate order.

November 7, 1950—050-518.

**CRIMINAL COURT OF RECORD—PERSONS SENTENCED BY—
§937.15, F. S. NOT APPLICABLE—POLK COUNTY**

QUESTION: Do the provisions of Section 937.15, Florida Statutes, apply to persons who are sentenced by the Criminal Court of Record of Polk County?

To: *Honorable A. Hagan Parrish, Sheriff, Polk County, Bartow, Florida:*

.....
..... your question is properly answered in the negative.

COSTS

February 1, 1949—049-38.

**SHERIFFS' MILEAGE FEES—ARREST IN ANOTHER STATE—
CASE SETTLED WITHOUT RETURN OF PRISONER—
NOT ALLOWABLE**

QUESTION: Is a sheriff entitled to charge mileage fees in cases when the arrest is made in another state, and the case settled by the county solicitor without return of the prisoner for trial?

To: *Honorable Walter I. Minton, Chief Deputy Sheriff, Palm Beach County, West Palm Beach, Florida:*

.....
The question must, therefore, be answered in the negative.

October 24, 1949—049-508.

**COUNTY JUDGES AS COMMITTING MAGISTRATES—NOT EN-
TITLED FEES UNTIL INFORMATION IS FILED INDICT-
MENT FOUND—CHAPTER 25070, ACTS 1949—
§939.14, F. S. '41**

QUESTION: Under Chapter 25070, Laws of Florida, Acts of 1949, is a county judge, acting as a committing magistrate, entitled to the flat sum of \$7.50 in each case bound over to the action of the Circuit Court even though no information is filed or indictment is found in the light of the provisions of Section 939.14, Florida Statutes?

To: *Honorable P. B. Howell, County Judge, Sumter County, Bushnell, Florida:*

.....
Therefore, I am of the opinion that all committing magistrates are subject to the provisions of Section 939.14, with the result that a committing magistrate is not entitled to bill the county for committing magistrate's costs except costs for executing warrant, unless and until an information is filed or an indictment found against the person bound over to the higher court.

November 19, 1949—049-550.

RE: OPINION 049-381
COUNTY JUDGE AS COMMITTING MAGISTRATE—FEES CON-
TROLLED BY §939.14, FLORIDA STATUTES

QUESTION: You ask if there is a conflict in our opinion 049-381 rendered to you on August 15, 1949, regarding fees which a county judge might legally charge the county under authority of Chapter 25070, Laws of Florida, Acts of 1949, and our opinion 049-508 to Honorable P. B. Howell, County Judge, Sumter County, relating to committing magistrate's fees under Chapter 25070, supra, and Section 939.14, Florida Statutes?

To: *Honorable Howard G. Livingston, County Judge, Highlands County, Sebring, Florida:*

.....
..... the answer to your question is in the negative.
.....

January 5, 1950—050-6.

COST BILL—AFFIDAVIT—CAPIAS—"NO PROPERTY FOUND"—
§§939.03, 939.04, F. S. '41

QUESTIONS: 1. Under Section 939.03, Florida Statutes, 1941, should the Board of County Commissioners, before payment of costs, require the sheriff to return the cost bill to the clerk and make the affidavit set forth in this section?

2. Should the County Commissioners refuse to pay the costs until a capias is issued as provided for in the collection of fine and forfeitures?

3. What is meant by the issuance of a capias?

To: *John C. Blocker, Pinellas County Attorney:*

As to question 1, Section 939.03, which applies only to capital cases, contemplates a levy upon any property of the prisoner. The provisions are mandatory in that when the sheriff returns the bill to the clerk he is required to make affidavit of the insufficiency of the property to pay same, etc. . . . , prior to its presentation and auditing according to law. Costs in capital cases should not be paid by the county in the absence of compliance with said statute. . . .

I am of the opinion that the only reasonable construction that can be placed upon the use of the word "capias" in Section 939.04, Florida Statutes, 1941, is that it means the method of enforcement provided in Sections 922.01 and 922.02.

.....
..... It is my opinion that the Board of County Commissioners should require the issuance of an execution and a return thereon "no property found," prior to the approval of the cost bill in non-capital case.

June 14, 1950—050-290.

JUSTICES OF THE PEACE COURTS—COSTS—PREPAYMENT—
REQUIREMENTS—§939.16, FLORIDA STATUTES

QUESTIONS: 1. Are the following named offenses of such a public nature that prosecutions therefor are not subject to the requirement of Section 939.16, Florida Statutes, that the justice of the peace shall require prepayment or security for costs unless the party applying for a warrant shall make an affidavit of insolvency and of substantial injury to persons or property by him suffered, to-wit: Aggravated assault, assault and battery, simple assault, uttering a worthless check for less than \$50.00, disposing of personal property under a lien or conditional sale contract, embezzlement of less than \$50.00, petit larceny, using another's automobile without his consent, malicious injury to or destruction of another's personal property, trespass, and peace warrant proceedings?

2. In cases involving the crimes named in Question One, supra, must the justice of the peace require prepayment or security for costs and, if he fails to do so, whom shall the justice of the peace and constable bill for their costs?

To: *Honorable A. M. Stephens, Constable, Jacksonville, Florida:*

AS TO QUESTION 1:

.....

All of the crimes named in Question One, supra, are misdemeanors. All are crimes involving special damage to the person or private property of another. Therefore, it is my opinion that all of them come within the operation of Section 939.16, and that prepayment of or security for the costs should be required unless the complaining witness makes an affidavit of insolvency and special damage to his person or property, except where, as hereinafter set forth, a public officer such as, for example, a sheriff, deputy sheriff or constable, institutes the prosecution in carrying out his duty to enforce the law.

.....

It is my view that Section 939.16 does not apply to cases made by public officers as, for example, sheriffs, deputy sheriffs or constables, who institute prosecutions in carrying out their duty to enforce the law.

In an opinion rendered on December 30, 1927 (1927-1928 Attorney General's Report, page 297), Honorable Fred H. Davis, then Attorney General, said with reference to Section 6176, R. G. S. 1920 (now Section 939.16):

"It appears that Section 6176 is limited in its application to cases in which private prosecutors institute criminal prosecution against others for violations of some personal or property right, the violation of which has caused the prosecutor injury.

"It has no application to criminal prosecutions started by officers of the law, who procure warrants for offenders arrested by them in the performance of their public duty . . ."

And in an opinion rendered on January 29, 1931, (1931-1932 Attorney General's Report, pages 508-509), former Attorney General Fred H. Davis also said with reference to the same statute (then Section 8490, C. G. L. 1927, now Section 939.16):

"However, when warrants are sworn out by officers of the law such as constables, deputy sheriffs, and sheriffs, it seems to me that the terms and provisions of Section 8490 are not applicable, and that the offense charged must be deemed a public one falling within the Simmons case."

I concur in the view thus expressed by Honorable Fred H. Davis.

AS TO QUESTION 2:

.....

Therefore, it is my opinion that if the justice of the peace fails to exact prepayment or security in such cases when they are made by a private person (except where an affidavit of insolvency and substantial injury is made), then he cannot look to the county for his own costs, except in the following instances: (1) where the justice of the peace has trial jurisdiction and the defendant is convicted in the justice of the peace court, or (2) where the defendant is bound over to a court in which prosecutions are upon information or indictment and the defendant is there informed against or indicted, or (3) where the defendant is bound over to the county judge's court, in which prosecutions are upon affidavit, and is there either convicted upon a plea of guilty or is tried as to his guilt or innocence before a jury or before the County Judge where a jury trial is waived.

.....

As to the constable's costs, they come under different rules.

The duty to exact prepayment or security for costs which Section 939.16 imposes is placed on the justice of the peace, not on the constable.

When a warrant, fair and valid on its face, is issued to a constable, he has no choice as to whether to serve it or not. He can't refuse to serve it on the ground that the justice of the peace has failed to exact prepayment or security for costs. Section 37.18 makes it his unqualified duty to serve it.

.....

..... it is my opinion that, in cases where the justice of the peace should exact prepayment or security but fails to do so, the constable is entitled to collect his costs from the county, except that, in a commitment trial case where the defendant is bound over to a court in which indictments are returned or informations are filed, and no information is filed or indictment returned in the case, Section 142.09 and 939.14 prohibit the county from paying any constable's fees in the commitment trial proceedings except the costs for executing the warrant.

.....

CHAPTER XLI

CORRECTIONAL SYSTEM

PAROLE

June 23, 1949—049-268.

STATE BOARD OF PARDONS—CIVIL CONTEMPT—NO POWER TO GRANT PARDON

QUESTION: Where a man is sentenced to jail for contempt of court because of his failure to make payments for the support of his children as ordered by the Circuit Court in an action brought against the man by his wife, does the State Board of Pardons have the power to grant a pardon for such contempt?

To: Honorable Frank S. Wright, Secretary, State Board of Pardons:

Since the contempt in question consisted of a failure to do something ordered by the court to be done in a civil action for the benefit of the opposing party, it was a civil contempt, as distinguished from a criminal contempt. . . .

Being a civil contempt, a pardon therefor cannot be granted. . . .

Therefore, the answer to your said question is, No.

PROBATION

April 8, 1949—049-168.

PAROLE COMMISSION—DUTIES—PROBATIONERS—NO JURISDICTION—DEFENDANT—DEFERRED SENTENCE

QUESTIONS: 1. Has the Court power to place a defendant in a criminal case who has been found guilty upon verdict, or plea, upon probation under the supervision and control of the Parole Commission without adjudicating guilt?

2. When the defendant in a criminal case has been found guilty by a jury, or pleads guilty, but not adjudged guilty by the Court, and the pronouncing of sentence has been deferred, does such conviction constitute loss of the defendant's right to vote, serve on juries, and other civil rights usually lost in this State by conviction of a felony?

3. Where the defendant in a criminal case has been found guilty, but the pronouncing of sentence has been deferred by the Court having original jurisdiction, and this Commission has been directed to make progress reports to said Court concerning the conduct, habits, associates, employment, etc., of the defendant, do we have similar jurisdiction as when an Order of Probation has been entered, and the defendant placed upon probation under the supervision and control of the Parole Commission?

To: Honorable Francis R. Bridges, Chairman, Florida Parole Commission, Tallahassee, Florida:

I It therefore appears that a reasonable argument can be made in behalf of each of two absolutely contradictory constructions, and, since the Supreme Court has not passed upon the question, I am unable to give you an authoritative answer to your first question. My suggestion is that you request the Legislature to clarify the probation statutes by amending them so that they will make the legislative intent apparent.

II. It is my opinion that your second question is properly answered in the negative.

III. It is my opinion that, when the imposition of sentence has been suspended or deferred, but the defendant is not placed on probation, the Parole Commission has no jurisdiction over the defendant I find no law indicating a legislative intent that the Parole Commission have any duties with regard to, or any jurisdiction over, a defendant upon whom the imposition of sentence is deferred without placing him on probation as provided in Chapter 948.

June 30, 1949—049-289.

JUSTICES OF THE PEACE—SUSPENSION—PROBATION—PART OR ALL OF SENTENCE—NO AUTHORITY

QUESTION: Where a defendant pleads guilty or is convicted in the court of justice of the peace having trial jurisdiction, does the justice, when imposing sentence, have authority to suspend any part or all of the sentence?

To: Honorable Martin G. Post, Justice of the Peace, St. Andrews, Florida:

. We do not discover in it (Section 948.10 F.S.) any power to impose sentence in portions, but only to pronounce the whole sentence, or to defer the whole until a probation order entered in lieu of it is vacated. (In Re: Bosso, not yet reported, decided June 24, 1949). It, therefore, appears that a criminal court in this state has no authority to suspend or grant probation to a *part* of a sentence to be imposed.

Where a defendant, in a court of this state having original jurisdiction of criminal actions (see Chapter 24384, Laws of Florida, Acts of 1947, applying to Bay County) has been found guilty (but no sentence has been imposed) if the court finds "that the defendant is not likely to again engage in a criminal course of conduct . . . in its discretion may thereupon *stay and suspend the imposition of sentence* upon such defendant," and place him upon probation under the supervision and control of the state parole commission. (Section 948.01, Florida Statutes). Under this statute once sentence is imposed by the court the case is no longer within its jurisdiction to grant probation (see 1941-2 Biennial Report 434). If you wish to place a defendant on probation you should, by your order, after finding the defendant guilty of the charge, suspend the imposition of the sentence until the further order of the court.

Doubtless the state parole commission of this state would be glad to discuss the question of probation with you if you will contact them in the capitol building here in Tallahassee, Florida, either by letter or in person.

September 29, 1949—049-463.

**BOARD OF PARDONS—POWER TO RELEASE FROM PROBATION
—DEFENDANT ADJUDGED GUILTY BUT NOT SENTENCED**

QUESTION: Where an accused in a criminal case pleads guilty and is adjudged guilty and placed on probation without sentence being imposed, does the Board of Pardons have the power to release such person from such probation?

To: State Board of Pardons:

.....
..... a person has been convicted when a judgment adjudicating his guilt has been entered, even though no sentence has been imposed, and that the Board of Pardons has full power to relieve him from the probation imposed upon him, by granting him either a full pardon or a conditional pardon.

November 29, 1949—049-566.

**PROBATION OF DEFENDANT—JURISDICTION OF CRIMINAL
COURT OF RECORD—BROWARD COUNTY**

QUESTION: Where a defendant was placed on probation by the Circuit Court of Broward County before the establishment of the Criminal Court of Record of said County, and has violated the material terms of his probation, which of said Courts now has jurisdiction to further handle the case?

To: Florida Parole Commission, Capitol:

.....
Therefore, it is my opinion that the Criminal Court of Record has full and exclusive jurisdiction to procure the presence of the defendant in such a case and to revoke, modify or continue the probation.

September 26, 1950—050-453.

**PARDONS, STATE BOARD OF—FEDERAL COURT—INCOME TAX
FRAUD—CONVICTION—FULL PARDON—CIVIL RIGHTS
RESTORATION—NO AUTHORITY**

QUESTION: "May the State Board of Pardons grant a full pardon and restore civil rights to a person convicted of income tax fraud in federal court?"

To: State Board of Pardons:

Article IV, Section 12, Constitution of Florida, grants the State Board of Pardons the power to:

"... remit fines and forfeitures, commute punishment and grant pardon after conviction, in all cases except treason and impeachment. . ."

It is my opinion that the power to "remit fines and forfeitures" is of sufficient breadth to permit the State Board of Pardons to restore rights forfeited under the laws of this State as a consequence of a conviction in another State or jurisdiction (a conviction in federal court is on the same footing with a conviction in another State; both are treated as convictions of a foreign jurisdiction). However, I do not believe said Board has the power to grant a full pardon to a person convicted of a federal offense in a federal court. That power, seemingly, rests with the President of the United States.

More explicitly, to the extent that the conviction for income tax fraud in federal court resulted in the forfeiture of any rights *under the laws of this State*, the said Board of Pardons has the power to grant relief; but beyond that they cannot go in so far as a conviction in another State or jurisdiction is concerned. (See Sections 40.01, 40.07, 98.01 and 112.01, Florida Statutes, for examples of possible losses of certain rights under the laws of Florida as a consequence of a conviction in another State or jurisdiction.

COUNTY AND MUNICIPAL CONVICTS

September 12, 1949—049-433

SENTENCE—PARTIAL SERVICE—FINE AND COSTS—CREDIT
ALLOWED—\$951.16, F. S. APPLICABLE

QUESTION: Where a person sentenced to pay a fine or costs is also sentenced, under Section 921.14, Florida Statutes, to serve a period of time in prison in default of the payment of such fine or costs, and serves a portion of the sentence in prison may he be allowed any credit upon the fine or costs for the period of time served in prison?

To: *Honorable D. L. Brock, Sheriff, Washington County, Chipley, Florida:*

.....

In the light of the above observations the above question should be answered in the affirmative.

.....

September 20, 1950—050-448.

CITIES—LEASING PRISONERS TO COUNTIES—NO STATUTORY
AUTHORITY

QUESTION: "Can the cities in this state lease their prisoners to the counties?"

To: *Honorable Nathan Mayo, Commissioner of Agriculture:*

.....

..... absent any special municipal charter provision, it is my opinion that the cities do not have the authority to lease their prisoners to the counties.

September 29, 1950—050-468—049-433.

**COUNTY JAIL—PRISONERS—SENTENCE—PARTIAL SERVICE—
FINE AND COSTS—ENTITLED REDUCTION—SECTION
951.16 FLORIDA STATUTES**

QUESTION: Where one is sentenced to serve a certain number of days in the county jail, or in lieu of serving said sentence to pay a fixed fine, does Section 951.16, Florida Statutes, entitle the prisoner to a reduction of the fine in proportion to the number of days imprisoned in the county jail under such sentence?

To: Honorable W. M. Brown, County Judge, Macclenny, Florida:

.....

Being of the opinion that said rulings were correct, I think that your question is properly answered in the affirmative.

STATE CONVICTS

May 27, 1949—049-235.

**REWARDS FOR CAPTURE OF ESCAPED PRISONERS—
ENTITLEMENT**

QUESTION: Where the State Prison authorities offer a reward for the capture and delivery to them of escaped State prisoners, is a person entitled to such reward when he captures an escaped State prisoner and turns him over to the Sheriff of the county, who, after said prisoner is tried and convicted on another charge, delivers him to the State Prison authorities under a new commitment?

To: Honorable Nathan Mayo, Commissioner of Agriculture:

.....

..... I do not think that the captor's right to claim the reward was defeated by the mere fact that the prisoner was turned over to the Sheriff and by him delivered to the Prison authorities (See 46 American Jurisprudence 118, "Rewards," Section 21), or by the mere fact that the Sheriff kept custody of the prisoner until he was tried, convicted and committed to the State Prison for another offense.

STATE PRISON FARM

June 14, 1949—049-249.

**HOUSE BILL NO. 618, ACTS 1949—EFFECTIVE DATE AUGUST 2,
1949—RELATING TO GAIN TIME FOR PRISONERS**

QUESTION: What is the effective date of House Bill No. 618, Acts of 1949, which amends Section 954.06, Florida Statutes 1941, relating to gain time for prisoners?

To: Honorable Nathan Mayo, Commissioner of Agriculture:

.....

..... House Bill No. 618 will take effect sixty days from the final adjournment of the regular 1949 session of the Legislature. said House Bill will take effect on August 2, 1949.

December 22, 1949—049-601.

PRISONER—GOOD CONDUCT—GAIN TIME—\$954.06 F. S.—
ALLOWANCE ON ALTERNATIVE TERM

QUESTION: Where a defendant is sentenced to serve a stated term in the State Prison; and to pay the costs of prosecution and, in default of such payment, to serve an alternative stated term, is gain time credit allowable on the alternative time imposed for failure to pay the costs?

To: *Honorable Nathan Mayo, Commissioner of Agriculture:*

.....

Therefore, I am of the opinion that an alternative prison term imposed for failure to pay costs is a part of the sentence, and it follows that gain time may be allowed on such alternative term, when earned by good behavior.

March 31, 1950—050-165.

STATE PRISON IMPROVEMENT FUND—FLORIDA STATE FARM
NO. 2—IMPROVEMENTS—PORTION ALLOWED—CHAP-
TER 25068, ACTS 1949 APPLICABLE

QUESTION: May a portion of the State Prison Improvement Fund be expended to provide extensions and improvements at Florida state Farm No. 2, in accordance with Section 954.49, Florida Statutes, 1941?

To: *Honorable Frank Wright, Secretary, Board of Commissioners, State Institutions:*

.....

Chapter 25068, Laws of Florida, 1949, repeals continuing appropriations with certain exceptions and became effective July 1, 1949. It transfers all sums on hand in any fund, with the exception of the excepted funds, to the general revenue fund. Consequently, I am inclined to conclude that all sums realized from the "sale of wood, lumber and similar home grown materials at the prison" since July 1, 1949, may be expended by the Board to provide such extensions and improvements contemplated by the Act, provided the Budget Commission, by appropriate resolution, designates such sums a "trust fund" under the provisions of Section 2 (paragraph 26) of Chapter 25068. See opinion #050-66 dated February 4, 1950.

Hence, as qualified in the paragraph immediately preceding, the question is answered in the affirmative.

April 11, 1950—050-189.

STATE PRISONERS—HABEAS CORPUS—TO COURT—APPLICA-
TIONS PENDING—CONFINEMENT IN FLAT TOP
NOT ALLOWED

QUESTION: Would it be proper practice to confine prisoners in the prison flat top when they apply to the Courts for habeas corpus writs, writs of error coram nobis, or other relief, and thereafter until the final disposition of such applications, upon the theory that such

prisoners are in the hands of the Courts and should be segregated as such instead of being worked and dealt with as are other prisoners?

To: *Honorable Nathan Mayo, Commissioner of Agriculture:*

.....

Therefore, your said question is answered in the negative.

April 19, 1950—050-203.

STATE PRISONERS—RELEASE FEES—\$954.32, F. S. APPLICABLE

QUESTION: Where, in a habeas corpus proceeding, the Circuit Judge rules that the prisoner has served in full the sentence imposed on him, and thereupon discharges the prisoner from your custody, is such prisoner entitled to payment of a release fee?

To: *Honorable Nathan Mayo, Commissioner of Agriculture:*

.....

..... In any such case, and in any other case where the prisoner does not serve out his sentence, he is not entitled to be paid a release fee.

Note: This opinion modified by Opinion No. 050-219.

April 27, 1950—050-219.

See: Opinion Number 050-203

STATE PRISONERS—RELEASE FEES—INDIGENT PAROLEES—
\$947.17(6), FLORIDA STATUTES

QUESTION: Where, in a habeas corpus proceeding, the Circuit Judge rules that the prisoner has served in full the sentence imposed on him, and thereupon discharges the prisoner from your custody, is such prisoner entitled to payment of a release fee?

To: *Honorable Nathan Mayo, Commissioner of Agriculture:*

This is to qualify the statement in said opinion that a prisoner who is paroled is not entitled to be paid a release fee. Section 947.17(6), Florida Statutes, provides, with regard to indigent prisoners placed on parole, that:

"If such person is indigent at the time he is placed on parole, which fact may be determined in advance by the commission, he shall be given his transportation by the nearest route to the destination noted in the parole. In addition thereto he shall be given a suit of clothes, one pair of shoes, a hat, a suit of under-clothing, not to exceed in value, in the aggregate, the sum of fifteen dollars, and ten dollars in cash, the cost of which shall be payable by the State of Florida as other expenses of the administration of the state prison are paid."

Said statute states the law applicable to release fees for indigent parolees, and is to be followed when they are placed on parole.

June 2, 1950—050-265.

COUNTY COMMISSIONERS—SHERIFFS—STATE PRISONERS—
TRANSPORTATION TO RAIFORD—FEES AUTHOR-
IZED—SECTION 954.22, FLORIDA STATUTES

QUESTION: May a board of county commissioners properly decline to pay the sheriff for transporting state convicts from the county jail to the state prison in Raiford, inasmuch as the prison division of the state will call for and pick up prisoners committed to the state prison?

To: *Honorable Jess Mathas, Clerk, Board of County Commissioners,
DeLand, Volusia County, Florida:*

.....

In my opinion, it is a legal and proper charge for the sheriff to present his bill for transporting prisoners to the state prison.

It is assumed, however, that the sheriff would not abuse this privilege merely to his own advantage and thereby incur unnecessary expense on the part of the county.

Your attention is also directed to Section 142.11, which provides that the board of county commissioners may reject items presented for payment which the board does not consider to be a necessary and just charge against the county. Section 142.13 provides that a county officer may test the validity of his charges by suit against the county if the charge is rejected by the county commissioners.

Your question is therefore answered in the negative, subject to the above remarks.

1950 CONSTITUTIONAL AMENDMENTS

The 1949 regular session of the legislature approved four proposed amendments for submission to the voters, and a fifth was added in the special session. Three of the five amendments deal with matters of state-wide concern and two with less broad subjects. All five of the proposed amendments were adopted by the people at the 1950 general election. So far as I am advised there have been no court decisions affecting these amendments since their adoption. The language of the new amendments are set out below.

1. Article V

Section 48. The Legislature shall have power to create and establish Juvenile Courts in such County or Counties or Districts within the State as it may deem proper, and to define the jurisdiction and powers of such courts and the officers thereof, and to vest in such courts exclusive original jurisdiction of all or any criminal cases where minors under any age specified by the Legislature from time to time are accused, including the right to define any or all offenses committed by any such persons as acts of delinquency instead of crimes; to provide for the qualification, election or selection and appointment of judges, probation officers and such other officers and employees of such courts as the Legislature may determine, and to fix their compensation and term of office; all in such manner, for such time, and according to such methods as the Legislature may prescribe and determine, without being limited therein by the provisions in this Constitution as to trial by jury in Sections 3 and 11 of the Declaration of Rights, as to use of the terms "prosecuting attorney" and "information" in Section 10 of the Declaration of Rights, as to election or appointment of officers in Section 27 of Article 3, as to jurisdiction of criminal cases in Sections 11, 17, 22 and 25 of Article 5, as to original jurisdiction of the interests of minors in Section 11 of Article 5, and as to style of process and prosecuting in the name of the State in Section 37 of Article 5, or other existing conflicting provisions of this Constitution.

2. Article VII

Section 5. The Legislature shall no longer be required to provide for an enumeration of the inhabitants of the State. The last preceding decennial Federal census beginning with the Federal census of 1950 shall also be the state census and shall control in all population Acts and constitutional apportionments, unless otherwise ordered by the Legislature.

3. Article III

Section 16. Acts; one subject; expressed in title; amendments.— Each law enacted in the Legislature shall embrace but one subject and matter properly connected therewith, which subject shall be briefly expressed in the title, and no law shall be amended or revised (by reference) to its title only; but in such case the act as revised or section, or subsection of a section, or paragraph of a subsection of a section, as amended, shall be reenacted and published at length.

4. Article V

Section 48. There is created a Judicial Circuit of the State of Florida, which is the Sixteenth Judicial Circuit and which shall

consist of the county of Monroe and for which there shall be elected one Circuit Judge and one States' Attorney as provided by law.

The Circuit Judge from group seven in and for the Eleventh Judicial Circuit and residing in Monroe County shall be the Circuit Judge of the Sixteenth Judicial Circuit and shall continue as such Judge until the expiration of his term of office, to-wit, the first Tuesday after the first Monday in January, 1955.

The State Attorney shall be appointed by the Governor to serve until the first Tuesday after the first Monday in January 1953.

5. Article V

Section 16A. When and as the business of the office of the County Judge requires, in any county having a population of more than two hundred and fifty thousand according to the last census taken by the United States government, the Legislature may provide for one additional County Judge who shall be elected by the qualified electors of such county at the time and places of voting for other county officers and such additional County Judge shall hold his office for four years, and his compensation shall be provided for by law, and he shall have and exercise all the powers and perform all the duties that are or may be provided or prescribed by the Constitution or statutes for County Judges, and all laws relating to the County Judge shall apply to said additional County Judge.

1949 ENACTMENTS OF GENERAL INTEREST

Sections 11.19 to 11.27, or chapter 25369, Laws of Florida, acts of 1949, creates and provides for operation of legislative reference bureau and council.

Sections 16.18 to 16.24 and 16.27 to 16.291, or chapter 25035, Laws of Florida, acts of 1949, adopted as statute law Volume I, Florida Statutes, 1949, and amended the existing laws relating to adoption and repeal of Florida Statutes.

Sections 16.43 to 16.47 and 16.49 and 16.50, or chapter 25034, Laws of Florida, acts of 1949, creating a permanent statutory revision and legislative drafting department.

Section 25.52, or chapter 25190, Laws of Florida, acts of 1949, authorizes the supreme court to sell excess volumes, and contract for reprint of out-of-print volumes of the supreme court reports.

Section 27.25 or chapter 25243, Laws of Florida, acts of 1949, authorizes the state attorney in each judicial circuit to employ one stenographer to be used in the conduct of his office.

Section 40.01, or chapter 25126, Laws of Florida, acts of 1949, provides for female jurors.

Section 74.15, or chapter 25212, Laws of Florida, acts of 1949, grants powers of eminent domain to flood control districts, subdrainage, and drainage districts.

Section 99.59, or chapter 25438, Laws of Florida, acts of 1949, requires certification of results of a referendum election to be filed with the secretary of state.

Section 102.011, or chapter 25143, Laws of Florida, acts of 1949, prescribes the procedure for nomination of presidential electors.

Section 102.62, or chapter 25273, Laws of Florida, acts of 1949, abolished limitation on campaign expenditures but did not relieve candidate of obligation to file statement of campaign expenditures.

Section 102.72, or chapter 25235, Laws of Florida, acts of 1949, to provide for number and election of delegates to national convention.

Sections 212.01 to 212.23, or chapter 26319, Laws of Florida, acts of special session of 1949, provides for administration, collection, remittance, delinquency and exemption of a three percent sales tax.

Section 229.241, or chapter 25186, Laws of Florida, acts of 1949, authorizes state board of education to make exchanges of lands of state school fund with state, county, private or corporate persons.

Section 241.471, or chapter 25249, Laws of Florida, acts of 1949, creates a school of medicine and nursing at the University of Florida.

Sections 244.01 to 244.03, or chapter 25017, Laws of Florida, acts of 1949, ratifies the Regional Compact entered into by this state and other southern states relating to the development and maintenance of regional educational services and schools in the southern states.

Sections 250.01 to 250.03, or chapter 25112, Laws of Florida, acts of 1949, amends military code and provides for state militia.

Sections 282.001 and 282.002, or chapter 25068, Laws of Florida, acts of 1949, repealed continuing and unobligated lump sum appropriations which extend beyond June 30, 1949, and provides for certain exceptions.

Sections 317.73 to 317.95, or chapter 25342, Laws of Florida, acts of 1949, Florida motor vehicle safety laws.

Section 320.083, or chapter 25049, Laws of Florida, acts of 1949, provides for specially lettered license tags for motor vehicles owned by amateur radio operators.

Sections 324.001 to 324.06 and 324.08 to 324.14 and 324.16 to 324.19, or chapter 25050, Laws of Florida, acts of 1949, sets up and provides for regulation of a motor vehicle financial responsibility law.

Sections 365.01 to 365.14, or chapter 25016, Laws of Florida, acts of 1949, provides for regulation of private wire service and prohibits its use for disseminating gambling information or gambling purposes.

Sections 378.01 to 378.45 and 378.47, or chapter 25209, Laws of Florida, acts of 1949, provides for flood control, reclamation, conservation and allied purposes in conjunction with local interests and the United States.

Sections 392.17 to 392.23, or chapter 25241, Laws of Florida, acts of 1949, requires compulsory isolation, treatment and possible hospitalization of persons infected with tuberculosis.

Section 394.38, or chapter 25373, Laws of Florida, acts of 1949, appropriated six hundred fifty thousand dollars for construction and equipping a psychiatric ward at Chattahoochee, and one hundred thousand dollars for its operation.

Sections 394.39 to 394.44, or chapter 25374, Laws of Florida, acts of 1949, directs employment of a chief psychiatrist and additional psychiatrist and dieticians at Chattahoochee.

Sections 396.01 to 396.06, or chapter 25371, Laws of Florida, acts of 1949, authorizes selection of city erection, equipping and employment of a staff for a hospital for alcoholics, and provides for commitment and release of patients.

Section 413.07, or chapter 25269, Laws of Florida, provides certain traffic regulations to assist blind persons to cross public streets or highways and provides a penalty for violation.

Sections 413.08 or chapter 25268, Laws of Florida, acts of 1949, prohibits anyone from excluding "seeing eye" dogs accompanying the blind into hotels and restaurants and provides a penalty for violation.

Section 420.121, or chapter 25009, Laws of Florida, acts of 1949, authorizes the improvement commission to acquire, own, and operate ferries and toll roads.

Sections 449.02 to 449.08, or chapter 25265, Laws of Florida, acts of 1949, increases the license fees for private employment agencies, provides for licensing of agency employees, requires certain reports and gives the industrial commission power to revoke licenses and assess penalties.

Sections 519.01 to 519.19, or chapter 25343, Laws of Florida, acts of 1949, creates the business of discount consumer credit financing.

Sections 541.001 to 541.09, or chapter 25204, Laws of Florida, acts of 1949, established a fair trade law.

Section 561.471, or chapter 25261, Laws of Florida, acts of 1949, requires the word "Florida" to be stamped on lids or containers of taxable malt beverages, and provides a penalty for violation.

Sections 588.12 to 588.26, or chapter 25236, Laws of Florida, acts of 1949, prohibits livestock from running at large on the public roads and provides for impounding sale, disposition of proceeds.

Section 589.011 or chapter 25324, Laws of Florida, acts of 1949, changes Florida board of forestry and parks to a corporate body known as Florida board of forestry.

Sections 592.01 to 592.13, or chapter 25353, Laws of Florida, acts of 1949, creates Florida board of parks and historic memorials.

Sections 601.01 to 601.0111, or chapter 25149, Laws of Florida, acts of 1949, repeals existing citrus code and enacts a new citrus code providing for the regulation and control of the citrus industry.

Section 821.041, or chapter 25245, Laws of Florida, acts of 1949, provides that unauthorized entry on enclosed and posted land is prima facie evidence of an intent to commit an act of trespass or other acts.

Section 849.091, or chapter 25096, Laws of Florida, acts of 1949, declares the organization of chain letter clubs, pyramid clubs, or other groups organized under such plan or devise, to be a lottery and prescribes a penalty for participation therein.

Section 860.13, or chapter 25259, Laws of Florida, acts of 1949, prohibits operation of aircraft while intoxicated or in a careless or reckless manner and provides a penalty for violation.

Section 875.46, or chapter 25360, Laws of Florida, acts of 1949, prohibits state officers or employees from engaging in political activities and prescribes a penalty for violation, however it allows persons to campaign for their own election or re-election.

Sections 876.05 to 876.10, or chapter 25046, Laws of Florida, acts of 1949, requires all state, county and municipal employees, and candidates for public office take a prescribed oath of loyalty to the U. S. and provides a penalty for violation.

IMPORTANT COURT PROCEEDINGS AND DECISIONS

During the years 1949 and 1950 there were several important court proceedings and decisions of sufficient importance to justify their inclusion in this report, which relate to or arise out of statutes enacted at the 1949 session of the Florida Legislature. These court proceedings and decisions are classified herein according to their general subject matter and points of law involved.

Anti-Bookie Act

McInerney et al v. Ervin, 46 So. 2nd 458—Action against the Attorney General and the State Railroad and Public Utilities Commission for a declaratory decree determining the constitutionality and construction of Ch. 365, Florida Statutes, relating to the regulation of private wire service.

In upholding an order of dismissal of the Circuit Court, it was held that the act questioned was within the power of the Legislature to enact in the exercise of the state's police power and was not in conflict with the Federal Communications Act.

Cigarette Taxes—Reduction Municipal Property Taxes

Gay v. Coral Gables, 47 So. 2nd 529.—The city of Coral Gables brought suit against the State Comptroller for a declaratory judgment interpreting section 210.03, Florida Statutes, setting forth the formula to be used in computing the reduction of municipal property taxes. The Circuit Court ruled that only the cigarette taxes actually received during the 12 months ending June 30 should be used in computing the reduction.

The Supreme Court affirmed this ruling, holding that a municipality, which had collected the tax for only 8 months prior to June 30, should compute its ad valorem tax reduction on a two-thirds basis.

Dispensing Opticians Act

City of St. Petersburg v. Siebold—49 So. 2nd. 291.—This appeal was taken to a decree of the Circuit Court holding that Sec. 484.10 F. S., the dispensing opticians act, which limited the amount of license taxes to be charged dispensing opticians by municipalities and counties to "a sum as now required by law, not to exceed \$5.00 a year" controlled the amount of license taxes collectable by the city of St. Petersburg, which under a provision of its charter enacted in 1931 passed an ordinance setting such license taxes at \$50.00 per year.

The court reversed the circuit court, holding:

"We are not clearly convinced that it was the legislative intent to repeal or suspend the charter power of the City of St. Petersburg and deprive it of the power by appropriate ordinance to impose license taxes upon privileges, occupations and professions carried on in the City. A more reasonable construction to be placed on the repealing clause would be to hold that the repealing clause referred to the subject-matter of Chapter 25255 and not the revenue producing authority defined in Section 3 of Chapter 15505, Special Acts of 1931, thus a clear field of operation may be given to each Act of the Legislature."

Fair Trade Act

Liquor Store v. Continental Distilling Corp. 40 So. 2nd 371.—Injunction against the sale of whiskey for less than minimum retail sales price established under the Fair Trade Act was granted and certiorari was brought to review the order granting same.

Ch. 541 F. S. is, in fact, a price fixing statute. The power to fix the price is vested in an interested person who is not an official. There is no review of his act. He is required to consult with no one and in no sense is required to take into consideration the cost of the article or the reasonableness thereof.

Held, the act is arbitrary and unreasonable and violates the right to own and enjoy property; one economic group may not have the sovereign power of the state extended to it and use it to detriment of other citizens. In that case the legislation serves a private rather than a public purpose. The sovereign power must not be delegated to a private citizen to be used for a private purpose and especially where there is no state supervision.

Fish and Game Lands—Taxation

State ex rel Charlotte County v. Webb (49 So. 2nd 93.—An original proceeding in mandamus brought by Charlotte county presenting the question as to whether or not lands held and used by the State Game and Freshwater Fish Commission for the propagation of

game and fish are subject to taxation for County debt service and general operating expenses.

Sections 192.06 and 192.08 F.S. exempting state lands from taxation were enacted in 1931 and 1934, and Sections 372.12 and 372.10 F.S. expressly providing that lands acquired for game and fish propagation and protection should be subject to taxation were enacted in 1929.

The court ruled that Sections 192.06 and 192.08 were later expressions of the legislature dealing with the same subject matter and must be construed as a repeal of the former act, and therefore lands of the game and fresh water fish commission were not subject to taxation for County operating and debt service expense.

Intangible Personal Property Taxes

State ex rel United States Sugar Corp. v. Gay, 46 So. 2nd 165.—Original proceeding in mandamus to compel the State Comptroller to refund intangible personal property taxes paid by a foreign corporation on an obligation represented by a note payable in New York City and secured by a mortgage on Florida real estate. The debtor is a Delaware corporation having its principal place of business in Florida.

In dismissing the cause, the court ruled:

"The non-resident creditor does not have to subject himself to double taxation by seeking the protection of our laws or our courts for his investments. He is free to restrict his mortgage investments to his own state; he may lend his money without security; or he may take a mortgage on Florida realty, but choose not to record it. If, however, the non-resident creditor elects to invoke and enjoy the benefits and protection of our laws and to obtain the economic advantages afforded thereby, it is only just that he should give a quid pro quo in return."

Integration of Florida Bar

Petition of Florida State Bar AAs'n—40 So. 2nd 902.—The petition in this case alleges that in September, 1947, the Florida State Bar Association made a complete roster of the Florida Bar, which was found to contain the names of 2,700 lawyers.

Letters, containing a ballot were mailed to each name on the roster, requesting their vote on the question of bar integration. Of the 2,700 ballots mailed to the members of the bar, 1,631 were voted and returned. Of the returned ballots 1,131 voted in favor of integration and 500 voted against integration.

The court ruled in the affirmative as to the integration on the questions of its authority to integrate the bar, to require payment of membership fees and as to the best interest of the public and the bar.

Labor Unions—Injunction Against Picketing

Local Union 519 v. Robertson, 44 So. 2nd 899.—Appeal from an order of injunction against picketing. The answer to the bill ad-

mits that the only disagreement between the defendant and the plaintiff arises out of the latter's refusal to sign a closed shop contract with the defendant and that the defendant is picketing the premises solely because of plaintiff's refusal to enter into the contract.

In affirming the order of the Circuit Court, the court ruled: "Like the strike, picketing is legal only to the extent that its purposes are within the allowable ambit of legitimate labor activity. In the present case it is conceded by the defendant that no labor dispute existed between the employer and the union, in the commonly understood sense of the term. The avowed immediate object of the picketing by the union was to compel the employer to enter into a closed shop contract obligating him to pursue a course of conduct at variance with the settled public policy of the state and one which would subject him to criminal and civil penalties."

Municipal Corporations—Street Railways

City of St. Petersburg v. Carter, 39 So. 2nd 805.—Proceeding in certiorari to review an order of the Florida Railroad and Public Utilities Commission with relation to the street railway system of St. Petersburg, Florida, which also serves the adjoining town of Gulfport.

Held, the charter of the City of St. Petersburg grants until said city the right to operate utilities including a transportation system within and without the limits of the city and also gives to the city the power to establish rates and charges for services.

There is no occasion to give one statutory creature, such as the Florida Railroad and Public Utilities Commission, jurisdiction over the activities of another statutory creature, to-wit: a duly chartered municipality, which is a distinct governmental unit, unless the law unmistakably so provides.

The Florida Railroad and Public Utilities Commission was not given, nor did the legislature intend that it should have, jurisdiction of this municipally owned and operated street railway system.

Regulation of Telephone and Telegraph

Dade County News Dealers Supply Co. v. Florida Railroad and Public Utilities Commission and v. Southern Bell Telephone and Telegraph Company, et al., 48 So. 2nd 89.—This action was brought to enjoin the Southern Bell Company from interfering with any telephone communications and services being furnished by the defendant to the plaintiff. The Attorney General intervened. The Circuit Court entered a decree for the defendants and plaintiff appealed. In a companion case the plaintiff brought certiorari to the Railroad and Public Utilities Comm. The Supreme Court ruled that under Chapter 364 F. S. providing that Railroad and Public Utilities Comm. shall regulate and control telephone and telegraph companies, that the Southern Bell Company was warranted in discontinuing its service to appellant when notified by the Attorney General so to do on the ground that it was being used for unlawful purposes; and that the Commission had the authority to adopt the specific rule under attack, adopted as authorized by Sec. 364.20 F.S.

Sales Tax—Injunction—Venue

Henderson v. Gay, 49 So. 2nd 325.—An appeal from an order of dismissal in Circuit Court of Dade County wherein the State Comptroller was sought to be enjoined from the collection of taxes levied under Ch. 212 F.S.

The court affirmed the order of dismissal holding that the suit was primarily an attempt to receive an interpretation of the sales tax act and the Comptroller could claim the privilege of being sued in the county of his legal residence.

Sales Taxes—Innkeepers

Gaulden v. Kirk, 47 So. 2nd 567.—An appeal from an order remanding petitioner to the sheriff in habeas corpus proceedings wherein petitioner was charged with violations of Ch. 212 Florida Statutes for failure to collect the tax imposed by section 212.03 F.S. from persons leasing or renting temporary living quarters, sleeping or housekeeping accommodations from the appellant; and failing and refusing to keep, or cause to be kept, the books and records required of him under and pursuant to said Ch. 212.

In affirming the order of the lower court, the Supreme Court held that the petitioner failed to show that his constitutional rights were violated under the terms of the Florida Revenue Act of 1949.

Schools—District Trustees—Nomination of Teachers

Armistead v. State ex rel Smyth, 41 So. 2nd 849.—Appeal from a peremptory order of mandamus commanding the board of trustees of school district 1 of Santa Rosa County to nominate N. O. Smyth as the principal of a certain school to the board of public instruction as recommended by the county superintendent of public instruction.

The constitutionality of section 231.35 F.S. requiring that such nominations may be rejected only for good cause, was upheld as against the contention that it was in violation of section 12, Art. X, Const.:

It was the intention of the Legislature, when functioning in behalf of our public school system, to require the trustees to show a good cause or reason for the rejection of the nomination of a qualified teacher as recommended by the County Superintendent, thereby making it beyond their power to arbitrarily and capriciously reject the nomination of a competent and qualified teacher unless a good cause or reason for the rejection was made to appear.

State Improvement Commission Bonds

State v. Florida State Improvement Commission, 48 So. 2nd 156.—An appeal from a final decree validating \$135,000, State Farmers Market Bonds, Series 26 of the Florida State Improvement Commission. The proceeds of the said bonds to be used for the purpose of constructing extensions and additions to presently existing State Farmers Markets located in Dade, Hardee and St. Lucie Counties.

For the purpose of issuing the bonds the Marketing Board would lease these markets to the State Improvement Commission which will in turn issue the bonds and construct the additions and extensions.

The Commission would then sub-lease the facilities to the Marketing Board at a rental sufficient to liquidate the bonded debt with interest.

The court ruled: "The contention that the proposal to allow the receipts of the separate and distinct farmers markets to be pooled in a single sinking fund and to use the receipts of any one of the three markets to retire the principal and interest incurred by any one of the other two markets is violative of Section 420.06, F. S., is without merit."

That part of Section 420.06 (12) F. S. immediately preceding and following the proviso when read with Section 603.16, F. S., completely negatives this contention.

The further contention that the State Agricultural Marketing Board is without authority to enter into a binding agreement with the Florida State Improvement Commission extending beyond the biennium, nor that the Improvement Commission has the power to make a binding lease agreement with the Marketing Board for any period is concluded contrary to the contention of appellants by Section 420.06 (3) (6), and Section 603.16, F. S.

State Universities—Admission of Negroes

State ex rel Hawkins v. State Board of Control, 47 So. 2nd 608.—Original proceeding in mandamus to compel admission of a negro to the law college of the University of Florida.

Held, that establishment of a negro law school at the Florida A. and M. College with equal facilities to those at the University of Florida would satisfy the equal protection mandate of the Fourteenth Amendment of the Federal Constitution.

Jurisdiction retained until a showing whether equal facilities do or do not exist at the agricultural college.

BOARDS, COMMISSIONS AND BUREAUS OF THE STATE OF FLORIDA

ACCOUNTANCY, STATE BOARD OF (See: STATE BOARD OF ACCOUNTANCY)

ADMINISTRATION, STATE BOARD OF (See: STATE BOARD OF ADMINISTRATION)

AGRICULTURAL AND INDUSTRIAL RELIEF COMMISSION (See: FLORIDA STATE IMPROVEMENT COMMISSION)

AGRICULTURAL MARKETING BOARD, STATE (See: STATE AGRICULTURAL MARKETING BOARD)

APPRENTICESHIP COUNCIL

Consists of twelve members, ten of whom are appointed by the governor, from employer and employee organizations, the chairman of industrial commission is chairman of said council and the supervisor of trade and industrial education acts as member, who with the chairman, has no vote except in case of a tie. Term of office of all members are concurrent with that of governor (§446.08, Florida Statutes). The general powers and duties of the council are set out in §446.08, Florida Statutes.

ARCHAEOLOGIST, STATE (See: STATE ARCHAEOLOGIST).

ARMORY BOARD

Composed of the governor, adjutant general, state quartermaster, general officers of the line and the officers who have attained the rank of colonel in the active national guard of this state (§250.48, Florida Statutes).

The powers and duties of the armory board are set out in §§250.48 and 250.49, Florida Statutes.

ATLANTIC STATES MARINE FISHERIES COMMISSION

Consists of three members, first, the supervisor of conservation, second, a legislator who is a member of the house of representatives committee on commerce and reciprocal trade; their terms terminate at the time each ceases to hold office, and third, a citizen who has knowledge and interest in marine fisheries problems to be appointed by the governor, whose term shall be for three years (§374.44, Florida Statutes).

The general powers and duties of the commission are set out in chapter 374, Florida Statutes.

BARBERS' SANITARY COMMISSION

Consists of three members appointed by the governor for terms of four years (§476.17, Florida Statutes).

The general powers and duties of the commission are set out in chapter 476, Florida Statutes.

BEAUTY CULTURE, STATE BOARD OF (See: STATE BOARD OF BEAUTY CULTURE)

BEVERAGE DEPARTMENT, STATE (See: STATE BEVERAGE DEPARTMENT)

BLIND, FLORIDA COUNCIL FOR THE (See: **FLORIDA COUNCIL FOR THE BLIND**)

BOARD, ARMORY (See: **ARMORY BOARD**)

BOARD FOR FIXING VALUES OF INVESTMENT SECURITIES OF TRUST COMPANIES

Composed of the comptroller, state treasurer and attorney general (§655.10, Florida Statutes).

The general powers and duties of the board are set out in §655.10, Florida Statutes.

BOARD FOR LICENSING LABOR BUSINESS AGENTS

Composed of governor, secretary of state and superintendent of public instruction (§481.04, Florida Statutes).

The general powers and duties of the said board are set out in the said section of the statutes.

BOARD FOR SUPERVISION AND REGULATION OF FORMS FOR ASSUMPTION OF RISKS BY SURETY COMPANIES

Composed of the governor, comptroller, state treasurer and attorney general (§648.16, Florida Statutes).

The general powers and duties of the board are set out in §648.16, Florida Statutes.

BOARD OF ADMINISTRATION, STATE (See: **STATE BOARD OF ADMINISTRATION**)

BOARD OF ARCHITECTS, FLORIDA STATE (See: **FLORIDA STATE BOARD OF ARCHITECTS**)

BOARD OF CHIROPODY EXAMINERS

Consists of three chiropodists practicing in this state and the secretary of the state board of medical examiners, who shall act as ex officio executive officer of the board. Members of the board are appointed by the governor for terms of three years (§461.05, Florida Statutes).

The general powers and duties of the board are set out in Chapter 461, Florida Statutes.

BOARD OF CHIROPRACTIC EXAMINERS, FLORIDA STATE (See: **FLORIDA STATE BOARD OF CHIROPRACTIC EXAMINERS**)

BOARD OF COMMISSIONERS OF STATE INSTITUTIONS

Composed of the governor, secretary of state, attorney general, comptroller, state treasurer, superintendent of public instruction and commissioner of agriculture (§17, article IV, Florida Constitution).

The general powers and duties of the commissioners are set out in §17, article IV, Florida Constitution, §225.02 and chapters 135, 283, 393, 394, 409, 954, 955 and 956, Florida Statutes.

BOARD OF COMMISSIONERS OF THE POLICE OFFICERS' INSURANCE AND ANNUITY FUND

Consists of five members appointed by the governor for terms of two years (§182.03, Florida Statutes).

The general powers and duties of the board are set out in chapter 182, Florida Statutes.

BOARD OF CONTROL

Consists of five citizens of this state, one from East Florida, one from South Florida, one from West Florida, one from Middle Florida, one from Middle South Florida, who have been residents of Florida for ten years, appointed by the governor for four years (§240.01, Florida Statutes).

The general powers and duties of the board are set out in chapter 240, Florida Statutes.

BOARD OF DISPENSING OPTICIANS

Composed of five members appointed by the governor to hold office for four years (§484.05, Florida Statutes).

The powers and duties of the board are set out in chapter 484, Florida Statutes.

BOARD OF DRAINAGE COMMISSIONERS

Composed of the governor, comptroller, state treasurer, attorney general and commissioner of agriculture (§298.69, Florida Statutes).

The general powers and duties of the board are set out in §§298.69-298.73, Florida Statutes.

BOARD OF EDUCATION, STATE (See: STATE BOARD OF EDUCATION)

BOARD OF ENGINEER EXAMINERS

Consists of five members, appointed by the governor, for terms of four years (§471.08, Florida Statutes).

The general powers and duties of the board are set out in chapters 471 and 472, Florida Statutes.

BOARD OF EXAMINERS IN THE BASIC SCIENCES

Consists of five members, appointed by the governor, for terms of four years (§456.07, Florida Statutes).

The general powers and duties of the board are set out in chapter 456, Florida Statutes.

BOARD OF FINANCE

Consists of the governor, state treasurer and comptroller (§18.10, Florida Statutes).

The general powers and duties of the board are set out in §§18.10-18.16, Florida Statutes.

BOARD OF HEALTH, STATE (See: STATE BOARD OF HEALTH)

BOARD OF MEDICAL EXAMINERS

Composed of ten practicing physicians, residents of this state, appointed by the governor for terms of four years (§§458.01 and 458.02, Florida Statutes).

The general powers and duties of the board are set out in chapter 458, Florida Statutes.

BOARD OF OPTOMETRY, FLORIDA STATE (See: FLORIDA STATE BOARD OF OPTOMETRY)

BOARD OF PARDONS

Composed of the governor, secretary of state, attorney general, comptroller and commissioner of agriculture (§12, article IV, Florida Constitution).

The general powers and duties of the board are set out in §12, article IV, Florida Constitution.

BOARD OF PENSIONS, STATE (See: STATE BOARD OF PENSIONS)**BOARD OF PHARMACY FOR THE STATE OF FLORIDA**

Consists of five persons, pharmacists of the state, appointed by the governor for terms of four years (§465.01, Florida Statutes).

The general powers and duties of the board are set out in chapter 465, Florida Statutes.

BOARD OF PHOTOGRAPHIC EXAMINERS

(Chapter 478, Florida Statutes, providing for board, held invalid and unconstitutional in *Sullivan v. De Cerb*, 156 Fla. 496, 23 So. 2d. 571.) Repealed by chapter 23699, Laws of Florida, 1947.

BOARD OF REVIEW, NATIONAL (See: NATIONAL BOARD OF REVIEW)**BOARD OF TRUSTEES OF TEACHERS' RETIREMENT SYSTEM**

Composed of the state board of education and two teachers appointed by the governor for terms of three years each (§238.03, Florida Statutes).

The general powers and duties of the board are set out in chapter 238, Florida Statutes.

BOARD OF VETERINARY EXAMINERS

Consists of three licensed graduate veterinarians, appointed by the governor for terms of four years (§474.01, Florida Statutes). The general powers and duties of the board set out in chapter 474, Florida Statutes.

BOARD, STATE HOUSING (See: STATE HOUSING BOARD)**BOARD TO NAME TEACHERS FOR SUMMER SCHOOLS**

Composed of the presidents of the University of Florida and the Florida State University, and of the superintendent of public instruction (§239.14, Florida Statutes).

The powers and duties of the board are set out in §239.14, Florida Statutes.

BOARD TO SUPERVISE FORMS FOR ASSESSMENT OF RISKS BY SURETY COMPANY

Composed of the governor, state comptroller, state treasurer and attorney general (§648.16, Florida Statutes).

The general powers and duties of the board are set out in the above mentioned section of the statutes.

BUDGET COMMISSION, STATE (See: STATE BUDGET COMMISSION)**BUREAU, MARKETING (See: MARKETING BUREAU)**

BUREAU OF IMMIGRATION

The bureau of immigration is under the direction and supervision of the commissioner of agriculture (§26, article IV, Florida Constitution and §19.25, Florida Statutes).

The powers and duties of the bureau of immigration set out in §26, article IV, Florida Constitution and §§19.25-19.28, Florida Statutes.

BUREAU OF INSPECTION

The bureau of inspection is under the direction and supervision of the commissioner of agriculture (§19.47, Florida Statutes).

The powers and duties of the bureau of inspection are set out in §§19.47-19.53, Florida Statutes.

BUREAU OF VITAL STATISTICS

This bureau is under the direction of the state board of health, which is composed of three members appointed by the governor for terms of four years (§§381.01 and 382.02, Florida Statutes). The general powers and duties of the bureau are set out in chapter 382, Florida Statutes.

CABINET, GOVERNOR'S (See: GOVERNOR'S CABINET)

CHIROPODY EXAMINERS, BOARD OF (See: BOARD OF CHIROPODY EXAMINERS)

CITRUS COMMISSION, FLORIDA (See: FLORIDA CITRUS COMMISSION)

COMMISSION, BARBERS' SANITARY (See: BARBERS' SANITARY COMMISSION)

COMMISSION, CONSTITUTION MONUMENT PARK (See: CONSTITUTION MONUMENT PARK COMMISSION)

COMMISSION, DIRECT TAX (See: DIRECT TAX COMMISSION)

COMMISSION, EVERGLADES NATIONAL PARK (See: EVERGLADES NATIONAL PARK COMMISSION)

COMMISSION, FLORIDA CENTENNIAL (See: FLORIDA CENTENNIAL COMMISSION)

COMMISSION, FLORIDA STATE IMPROVEMENT (See: FLORIDA STATE IMPROVEMENT COMMISSION)

COMMISSION, GAME AND FRESH WATER FISH (See: GAME AND FRESH WATER FISH COMMISSION)

COMMISSION, HOTEL (See: HOTEL COMMISSION)

COMMISSION, MILK (See: MILK COMMISSION)

COMMISSION, PAROLE (See: PAROLE COMMISSION)

COMMISSION, SECURITIES (See: SECURITIES COMMISSION)

COMMISSION, STATE RAILROAD (See: STATE RAILROAD COMMISSION)

COMMISSIONER, INSURANCE (See: INSURANCE COMMISSIONER)

COMMISSIONER OF REVENUE (INHERITANCE TAXES)

The comptroller of the State of Florida is designated as commissioner of revenue (§198.05, Florida Statutes).

The general powers and duties of the commissioner are set out in chapter 198, Florida Statutes.

COMMISSIONERS OF STATE INSTITUTIONS, BOARD OF (See: BOARD OF COMMISSIONERS OF STATE INSTITUTIONS)

COMMISSIONERS ON UNIFORM STATE LAWS

Composed of three commissioners to be appointed by the governor for terms of four years (§11.01, Florida Statutes).

The powers, duties and qualifications of the commissioners are set out in §11.01, Florida Statutes.

COMMITTEE FOR DEPOSITING STATE FUNDS (See: BOARD OF FINANCE)

COMMITTEE ON COURSES OF STUDY

Composed of nine members appointed by the state board of education upon the recommendation of the superintendent of public instruction for terms of four years (§233.01, Florida Statutes).

The powers, duties and qualifications of the committee are set out in chapter 233, Florida Statutes.

COMMITTEE, TEXTBOOK RATING (See: TEXTBOOK RATING COMMITTEE)

CONSERVATION, STATE BOARD OF (See: STATE BOARD OF CONSERVATION)

CONSERVATION BOARD, STATE SOIL (See: STATE SOIL CONSERVATION BOARD)

CONSTITUTION MONUMENT PARK COMMISSION

Composed of the governor, secretary of state and one other person to be appointed by the governor, the term of office of appointee not being fixed (§265.08, Florida Statutes).

The general powers and duties of the commission are set out in §§265.08, 265.09, 265.14 and 265.15, Florida Statutes.

CONTROL, BOARD OF (See: BOARD OF CONTROL)

COUNCIL FOR THE BLIND, FLORIDA (See: FLORIDA COUNCIL FOR THE BLIND)

COURSES OF STUDY, COMMITTEE ON (See: COMMITTEE ON COURSES OF STUDY)

CRIPPLED CHILDREN'S COMMISSION, FLORIDA (See: FLORIDA CRIPPLED CHILDREN'S COMMISSION)

DADE MEMORIAL COMMISSION

Composed of three members, appointed by the governor, for terms of four years (§258.01, Florida Statutes).

The general powers and duties of the commission are set out in §§258.02-258.07, Florida Statutes.

DEFENSE COUNCIL, FLORIDA STATE (See: FLORIDA STATE DEFENSE COUNCIL)

DENTAL EXAMINERS, FLORIDA STATE BOARD OF (See: FLORIDA STATE BOARD OF DENTAL EXAMINERS)

DEPARTMENT, STATE AUDITING (See: STATE AUDITING DEPARTMENT)

DEPARTMENT, STATE BEVERAGE (See: STATE BEVERAGE DEPARTMENT)

DEPARTMENT, STATE ROAD (See: STATE ROAD DEPARTMENT)

DEPARTMENT, STATUTORY REVISION (See: STATUTORY REVISION DEPARTMENT)

DEPARTMENT OF PUBLIC SAFETY

Composed of the governor, secretary of state, attorney general, comptroller, state treasurer, superintendent of public instruction and commissioner of agriculture (§321.01, Florida Statutes).

The general powers and duties of the department are set out in chapters 321 and 322, Florida Statutes.

DEPARTMENT OF VETERANS' AFFAIRS

Composed of seven members, one from each congressional district and one from the state at large, appointed by the governor for terms of four years each except the first board whose terms are as provided by law (§292.04, Florida Statutes).

The general powers and duties of the department are set out in §§292.04 to 292.16, Florida Statutes.

DEPOSITING STATE FUNDS, COMMITTEE FOR (See: COMMITTEE FOR DEPOSITING STATE FUNDS)

DIRECT TAX COMMISSION

Composed of the governor, state treasurer and comptroller (§14.12, Florida Statutes).

The general powers and duties of the commission are set out in §14.12, Florida Statutes.

DRAINAGE COMMISSIONERS, BOARD OF (See: BOARD OF DRAINAGE COMMISSIONERS)

ECONOMIC ADVANCEMENT COUNCIL, FLORIDA (See: FLORIDA ECONOMIC ADVANCEMENT COUNCIL)

EDUCATION, STATE BOARD OF (See: STATE BOARD OF EDUCATION)

ELECTION CANVASSERS, STATE BOARD OF (See: STATE BOARD OF ELECTION CANVASSERS)

ENGINEER EXAMINERS, BOARD OF (See: BOARD OF ENGINEER EXAMINERS)

EVERGLADES NATIONAL PARK COMMISSION

Composed of not less than twelve and not more than thirty members to be appointed by the governor for a period of four years (§264.01, Florida Statutes).

The general powers and duties of the commission are set out in chapter 264, Florida Statutes, 1941, and §264.12, Florida Statutes.

EXAMINERS FOR NURSES, STATE BOARD OF (See: STATE BOARD OF EXAMINERS FOR NURSES).

EXAMINERS IN THE BASIC SCIENCES, BOARD OF (See: BOARD OF EXAMINERS IN THE BASIC SCIENCES)

FIRE MARSHAL, STATE (See: STATE FIRE MARSHALL)

FLORIDA AGRICULTURAL AND INDUSTRIAL RELIEF COMMISSION

(Name changed to Florida State Improvement Commission)

FLORIDA BOARD OF FORESTRY

Consists of five members, appointed by the governor, for terms of four years (§589.01, Florida Statutes).

The general powers and duties of the board are set out in chapters 589, 590 and 591, Florida Statutes.

FLORIDA BOARD OF MASSAGE

Composed of three members, appointed by the governor, for terms of three years. The secretary of the state board of medical examiners shall act as an ex officio member of said board (§480.04, 1947 Supplement, Florida Statutes).

The general powers and duties of the board are set out in chapter 480, Florida Statutes.

FLORIDA BOARD OF PARKS AND HISTORIC MEMORIALS

Consists of five members appointed by the governor to serve for a four year term. One member is appointed from each park region as defined by §592.02, Florida Statutes. (§§592.01, 592.03, Florida Statutes).

The general powers and duties are set out in chapter 592, Florida Statutes.

FLORIDA CENTENNIAL COMMISSION (Expired Jan. 1, 1946)

FLORIDA CHILDREN'S COMMISSION

Composed of not less than fifteen nor more than twenty-one members, appointed by the governor for terms of four years each, except the first commissioners appointed, whose terms are as set out in the statute (§417.01, Florida Statutes).

The general powers and duties of the commission are set out in chapter 417, Florida Statutes.

FLORIDA CITRUS COMMISSION

Composed of eleven members, appointed by the governor for terms of two years, such members to be practical citrus fruit men, resident citizens of the State of Florida, seven members who shall be growers not connected with any packing, shipping or marketing organization (§595.01, Florida Statutes).

The general powers and duties of the commission are set out in chapters 594, 595 et seq., Florida Statutes.

FLORIDA COUNCIL FOR THE BLIND

Consists of five members, appointed by the governor, for terms of four years (§409.26, Florida Statutes).

The general powers and duties of the council are set out in §§409.26 and 409.27, Florida Statutes.

FLORIDA CRIPPLED CHILDREN'S COMMISSION

Composed of five members to be appointed by the governor for terms of four years (§391.02, Florida Statutes).

The powers, duties and qualifications of the commission are set out in chapter 391, Florida Statutes.

FLORIDA DRY CLEANING AND LAUNDRY BOARD (Law creating said board repealed in 1943.)**FLORIDA ECONOMIC ADVANCEMENT COUNCIL** (Repealed by Ch. 24337, Laws of Florida, 1947)**FLORIDA INDUSTRIAL COMMISSION**

Consists of three members, appointed by the governor, for terms of four years (§440.44, Florida Statutes).

The general powers and duties of the commission are set out in chapters 440 and 443, Florida Statutes.

FLORIDA KEYS AQUEDUCT COMMISSION

Consists of three members appointed by the governor. (Chapter 21230, Laws of Florida, Acts of 1941).

The general powers and duties are set out in said chapter 21230, Laws of Florida, Acts of 1941.

FLORIDA MILK BOARD (See: MILK COMMISSION)**FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION**

Consists of three commissioners, elected by the qualified electors of the state, for terms of four years (§350.01, Florida Statutes).

The general powers and duties of the commission are set out in §35, article V, Florida Constitution; chapters 323, 347, 350, 352, 360, 364, and §116.19, Florida Statutes.

FLORIDA REAL ESTATE COMMISSION

Consists of three persons, resident citizens of Florida, to be appointed by the governor for terms of three years (§475.02, Florida Statutes).

The general powers and duties of the commission are set out in chapter 475, Florida Statutes.

FLORIDA STATE ADVERTISING COMMISSION

Composed of the governor, commissioner of agriculture, the secretary of state, and six additional members to be appointed by the governor, one from each of the six congressional districts, for terms of four years each, except the first members appointed whose terms are as fixed by statute (§286.11, Florida Statutes). The powers and duties of the commission are set out in chapter 286, Florida Statutes.

FLORIDA STATE BOARD OF ARCHITECTS

Composed of five members who are architects, appointed by the governor for terms of four years (§467.01, Florida Statutes).

The general powers and duties of the board are set out in chapter 467, Florida Statutes.

FLORIDA STATE BOARD OF CHIROPRACTIC EXAMINERS

Composed of three members to be appointed by the governor for terms of three years, and who shall be doctors of chiropractic, and who shall be bona fide residents of this state (§§460.01 and 460.02, Florida Statutes).

The general powers and duties of the board are set out in chapter 460, Florida Statutes.

FLORIDA STATE BOARD OF DENTAL EXAMINERS

Composed of five members, appointed by the governor for terms of four years (§466.06, Florida Statutes).

The general powers and duties of the board are set out in chapter 466, Florida Statutes.

FLORIDA STATE BOARD OF OPTOMETRY

Composed of five optometrists, residents of this state, appointed by the governor, for terms of four years (§463.02, Florida Statutes).

The general powers and duties of the board are set out in chapter 463, Florida Statutes.

FLORIDA STATE DEFENSE COUNCIL

Composed of the governor, as chairman, the attorney general and adjutant general, as ex officio members, and other members (number not designated) to be appointed by the governor for terms not exceeding four years each, one of whom is designated by the governor as vice-chairman (§249.03, Florida Statutes).

The governor is given power, whenever he deems it expedient, by proclamation, to dissolve, suspend or reestablish the defense council (§249.01, Florida Statutes).

The powers, duties and qualifications of the members of the council are set out in chapter 249, Florida Statutes.

FLORIDA STATE FIRE COLLEGE, BOARD OF TRUSTEES

Composed of three members, appointed by the governor to serve for a term of four years. Members are required to be firemen who have been employed in the state for at least five years previous to appointment (§242.52, Florida Statutes).

The general powers and duties of the board are set out in §242.55, Florida Statutes.

FLORIDA STATE IMPROVEMENT COMMISSION

Composed of five members, one of whom shall be the governor, one of whom shall be the chairman of the state road department, the three other members to be appointed by the governor for terms of four years (§420.02, Florida Statutes).

The general powers and duties of the commission are set out in chapter 420, Florida Statutes.

Formerly the agricultural and industrial relief commission.

FORESTRY, FLORIDA BOARD OF (See: FLORIDA BOARD OF FORESTRY)**FUNERAL DIRECTORS AND EMBALMERS, STATE BOARD OF (See: STATE BOARD OF FUNERAL DIRECTORS AND EMBALMERS)**

GAME AND FRESH WATER FISH COMMISSION

Consists of five members appointed by the governor for terms of five years (§30, article IV, Florida Constitution).

The general powers and duties of the commission are set out in the above section of the constitution and chapter 372, Florida Statutes.

GOVERNOR'S CABINET

Composed of the governor, secretary of state, attorney general, comptroller, state treasurer, superintendent of public instruction and commissioner of agriculture (§20, article IV, Florida Constitution).

The general powers and duties of the governor's cabinet are set out in §20, article IV, Florida Constitution.

GULF STATES MARINE FISHERIES COMMISSION

Consists of three members. First, the supervisor of conservation, second, a legislator and a member of the house committee on commerce and reciprocal trade, who shall be designated by said committee, and third, a citizen who has knowledge of and interested in marine fisheries, to be appointed by the governor. The first two members are ex officio members whose terms expire at the time he ceases to hold office and the third member holds office for a term of three years (§374.50, Florida Statutes). The general powers and duties of the commission are set out in chapter 374, Florida Statutes.

HOSPITAL COUNCIL, ADVISORY

Composed of seven members; state health officer as chairman ex officio and six other members who are appointed by the governor to serve a term of four years. (§395.10, Florida Statutes). The general powers and duties are set out in §§395.10 and 395.11, Florida Statutes.

HOTEL COMMISSION

Consists of a commissioner, appointed by the governor, whose term of office runs concurrently with that of the governor (§509.02, Florida Statutes).

The general powers and duties of the commission are set out in chapters 509, 510 and 511, Florida Statutes.

IMMIGRATION, BUREAU OF (See: BUREAU OF IMMIGRATION)**INDUSTRIAL COMMISSION, FLORIDA (See: FLORIDA INDUSTRIAL COMMISSION)****INSPECTION, BUREAU OF (See: BUREAU OF INSPECTION)****INSTITUTE OF GOVERNMENT, TRUSTEES**

Composed of five members, appointed by the governor for terms of four years each, except the first board of trustees whose terms are as fixed by the statute (§241.53, Florida Statutes, 1941, 1947 Supplement, Florida Statutes).

The general powers and duties of said trustees are set out in §§241.50 to 241.59, Florida Statutes.

INSURANCE COMMISSIONER

The state treasurer is designated as insurance commissioner (§626.01, Florida Statutes).

The general powers and duties of the insurance commissioner are set out in chapters 625, 626 et seq., Florida Statutes.

INTERNAL IMPROVEMENT FUND, TRUSTEES OF THE (See: TRUSTEES OF THE INTERNAL IMPROVEMENT FUND)**INVESTMENT SECURITIES OF TRUST COMPANIES, BOARD FOR FIXING VALUES OF (See: BOARD FOR FIXING VALUES OF INVESTMENT SECURITIES OF TRUST COMPANIES)****JUDAH P. BENJAMIN MEMORIAL COMMISSION**

Composed of three citizens of the state appointed by the governor, terms of office not stated (§265.10, Florida Statutes).

The general powers and duties of the commission are set out in §§265.10-265.12, Florida Statutes.

LABOR BUSINESS AGENTS, BOARD FOR LICENSING (See: BOARD FOR LICENSING LABOR BUSINESS AGENTS)**LAW EXAMINERS, STATE BOARD OF (See: STATE BOARD OF LAW EXAMINERS)****LEGISLATIVE REFERENCE BUREAU**

Composed of fourteen members, the president of the senate and speaker of the house of representatives together with six other senators, and six other members of said house, all of whom are appointed by the president of the senate and speaker of the house of representatives, respectively. The members serve at the pleasure of said senate and house (§11.21, Florida Statutes).

The purpose, powers and duties of the council are set out in §§11.20 and 11.21, Florida Statutes.

LIBRARY BOARD, STATE (See: STATE LIBRARY BOARD)**LIVE STOCK SANITARY BOARD, STATE (See: STATE LIVE STOCK SANITARY BOARD)****MARKETING BOARD, STATE AGRICULTURAL (See: STATE AGRICULTURAL MARKETING BOARD)****MARKETING BUREAU**

Consists of a state marketing commissioner, appointed by the governor, upon recommendation of the commissioner of agriculture, for a term of two years (§603.01, Florida Statutes).

The general powers and duties of the bureau are set out in §603.09, Florida Statutes.

MASSAGE, FLORIDA BOARD OF (See: FLORIDA BOARD OF MASSAGE)**MEDICAL EXAMINERS, BOARD OF (See: BOARD OF MEDICAL EXAMINERS)****MEMORIAL COMMISSION, DADE (See: DADE MEMORIAL COMMISSION)**

MEMORIAL COMMISSION, JUDAH P. BENJAMIN (See: JUDAH P. BENJAMIN MEMORIAL COMMISSION)

MEMORIAL COMMISSION, STEPHEN FOSTER (See: STEPHEN FOSTER MEMORIAL COMMISSION)

MEMORIAL, SPANISH WAR (See: SPANISH WAR MEMORIAL)

MILK COMMISSION

Consists of milk administrator, appointed by the governor for a term of four years, state health officer, the commissioner of agriculture, a citizen not connected with the milk industry and three members of the milk industry; one a producer, one a distributor and one a producer-distributor appointed by the governor for terms of four years (§501.03, Florida Statutes).

The general powers and duties of the commission are set out in chapter 501, Florida Statutes.

MOTOR VEHICLE COMMISSIONER, STATE (See: STATE MOTOR VEHICLE COMMISSIONER)

NATIONAL BOARD OF REVIEW

Governor may appoint three persons to be members of the national board of review (§521.01, Florida Statutes).

The national board of review is charged with the examination and approval of motion picture film.

NATUROPATHIC EXAMINERS, STATE BOARD OF (See: STATE BOARD OF NATUROPATHIC EXAMINERS)

NAVAL STORES, SUPERVISORY INSPECTOR OF (See: SUPERVISORY INSPECTOR OF NAVAL STORES)

OFFICE, PUBLIC LAND (See: PUBLIC LAND OFFICE)

OSTEOPATHIC MEDICAL EXAMINERS, STATE BOARD OF (See: STATE BOARD OF OSTEOPATHIC MEDICAL EXAMINERS)

PARDONS, BOARD OF (See: BOARD OF PARDONS)

PAROLE COMMISSION

Consists of three citizens and residents of this state, appointed by the board of commissioners of state institutions, certified by said board to the senate for confirmation. The members of the commission are appointed for terms of six years (§§947.02 and 947.03, Florida Statutes; §32, article XVI, Florida Constitution). The general powers and duties of the commission are set out in chapters 947 and 948, Florida Statutes; §32, article XVI, Florida Constitution.

PENSIONS, STATE BOARD OF (See: STATE BOARD OF PENSIONS)

PHARMACY, BOARD OF, FOR THE STATE OF FLORIDA (See: BOARD OF PHARMACY FOR THE STATE OF FLORIDA)

PHOTOGRAPHIC EXAMINERS, BOARD OF (See: BOARD OF PHOTOGRAPHIC EXAMINERS)

PLANNING BOARD, STATE (See: STATE PLANNING BOARD)

PLANT BOARD, STATE (See: STATE PLANT BOARD)

POLICE OFFICERS' INSURANCE AND ANNUITY FUND, BOARD OF COMMISSIONERS OF THE (See: BOARD OF COMMISSIONERS OF THE POLICE OFFICERS' INSURANCE AND ANNUITY FUND)

PUBLIC LAND OFFICE

The public land office is under the direction and supervision of the commissioner of agriculture (§26, article IV, Florida Constitution and §19.13, Florida Statutes).

The powers and duties of this office are set out in §§19.13-19.24, Florida Statutes, and §26, article IV, Florida Constitution.

PUBLIC SAFETY, DEPARTMENT OF (See: DEPARTMENT OF PUBLIC SAFETY)

PUBLIC WELFARE, STATE BOARD OF (See: STATE BOARD OF PUBLIC WELFARE)

RACING COMMISSION, STATE (See: STATE RACING COMMISSION)

RAILROAD AND PUBLIC UTILITIES COMMISSION (See: FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION)

RAILROAD ASSESSMENT BOARD

Composed of the Comptroller, State Treasurer and Attorney General (§195.01, Florida Statutes). The general powers and duties of the board are set out in Chapter 195, Florida Statutes.

REAL ESTATE COMMISSION, FLORIDA (See: FLORIDA REAL ESTATE COMMISSION)

RELIEF COMMISSION, AGRICULTURAL AND INDUSTRIAL (See: AGRICULTURAL AND INDUSTRIAL RELIEF COMMISSION)

RETIREMENT SYSTEM, BOARD OF TRUSTEES OF TEACHERS' (See: BOARD OF TRUSTEES OF TEACHERS' RETIREMENT SYSTEM)

REVENUE, COMMISSIONER OF (See: COMMISSIONER OF REVENUE)

SECURITIES COMMISSION

Composed of the comptroller, state treasurer and attorney general (§517.03, Florida Statutes).

The general powers and duties of the commission are set out in chapter 517, Florida Statutes.

SERVICE OFFICER, STATE (See: STATE SERVICE OFFICER)

SOCIAL WELFARE (See: STATE WELFARE BOARD)

SPANISH WAR MEMORIAL

The Spanish war memorial is under the supervision of the commissioners of state institutions (§265.17, Florida Statutes).

The general powers and duties are set out in §§265.17-265.22, Florida Statutes.

STATE ADVISORY COUNCIL ON EDUCATION

Consists of seven members appointed by the governor for four year overlapping terms (§228.15, Florida Statutes).

The powers and duties of said board are set out in §228.15, Florida Statutes.

STATE AGRICULTURAL MARKETING BOARD

Composed of the governor, commissioner of agriculture and the state marketing commissioner (§603.16, Florida Statutes). The state marketing commissioner is appointed by the governor, upon the recommendation of the commissioner of agriculture, for terms of two years (§603.01, Florida Statutes).

The general powers and duties of the board are set out in §§603.16-603.18, Florida Statutes.

STATE ARCHAEOLOGIST

Appointed by the governor (term of office not given) (§376.01, Florida Statutes).

The general powers and duties of the state archaeologist are set out in chapter 376, Florida Statutes.

STATE AUDITING DEPARTMENT

Composed of a state auditor and ten assistant state auditors to be appointed by the governor for terms of four years, unless sooner removed by the governor (§21.02, Florida Statutes).

The powers, duties and qualifications of the state auditor and assistant state auditors are set out in chapter 21, Florida Statutes.

STATE BEVERAGE DEPARTMENT

The principal officer of the department shall be the director, appointed by the governor for a term of four years (§561.05, Florida Statutes).

The general powers and duties of the department are set out in chapter 561, Florida Statutes.

STATE BOARD OF ACCOUNTANCY

Consists of five persons, each of whom shall be a resident of this state, and shall hold a certificate as a certified public accountant, appointed by the governor for terms of four years (§473.03, Florida Statutes).

The general powers and duties of the board are set out in chapter 473, Florida Statutes.

STATE BOARD OF ADMINISTRATION

Composed of the governor, state treasurer and comptroller (§16, article IX, Florida Constitution).

The general powers and duties of the board are set out in §16, article IX, Florida Constitution; §§344.12-344.26, Florida Statutes.

STATE BOARD OF ARCHITECTS, FLORIDA (See: FLORIDA STATE BOARD OF ARCHITECTS)**STATE BOARD OF BEAUTY CULTURE**

Consists of three members appointed by the governor for terms of three years. Two members of said board shall be women (§477.18, Florida Statutes).

The general powers and duties of the board are set out in chapter 477, 1947 Supplement, Florida Statutes.

STATE BOARD OF CHIROPODY EXAMINERS (See: BOARD OF CHIROPODY EXAMINERS)

STATE BOARD OF CHIROPRACTIC EXAMINERS, FLORIDA (See: FLORIDA STATE BOARD OF CHIROPRACTIC EXAMINERS)

STATE BOARD OF CONSERVATION

Composed of the governor, secretary of state, attorney general, comptroller, state treasurer, commissioner of agriculture and superintendent of public instruction (§373.01, Florida Statutes).

The general powers and duties of the board are set out in chapters 373-375, Florida Statutes.

STATE BOARD OF CONTROL (See: BOARD OF CONTROL)

STATE BOARD OF DENTAL EXAMINERS, FLORIDA (See: FLORIDA STATE BOARD OF DENTAL EXAMINERS)

STATE BOARD OF EDUCATION

Composed of the governor, secretary of state, attorney general, state treasurer and superintendent of public instruction (§3, article XII, Florida Constitution).

The general powers and duties of the board are set out in §3, article XII, Florida Constitution and §§229.07 and 229.08, Florida Statutes.

STATE BOARD OF ELECTION CANVASSERS

Composed of the secretary of state, comptroller and attorney general (§99.49, Florida Statutes).

The general powers and duties of the board are set out in §§99.49-99.51 and 102.47, 102.48, Florida Statutes.

STATE BOARD OF ENGINEER EXAMINERS (See: BOARD OF ENGINEER EXAMINERS)

STATE BOARD OF EXAMINERS FOR NURSES

Consists of five nurses, residents of this state, appointed by the governor for terms of four years (§464.01, Florida Statutes).

The general powers and duties of the board are set out in chapter 464, Florida Statutes.

STATE BOARD OF EXAMINERS IN OPTOMETRY (See: FLORIDA STATE BOARD OF OPTOMETRY)

STATE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Consists of the state health officer and four other members to be appointed by the governor for terms of four years (§470.02, Florida Statutes).

The general powers and duties of the board are set out in chapter 470, Florida Statutes.

STATE BOARD OF HEALTH

Composed of three members to be appointed by the governor for terms of four years (§§381.01 and 381.02, Florida Statutes).

The general powers and duties of the board are set out in chapter 381, Florida Statutes.

STATE BOARD OF LAW EXAMINERS

Composed of nine members appointed by the governor, two from each congressional district as they existed on July 1, 1925, and one from the state at large, for terms of three years (§39.04, Florida Statutes).

The powers, duties and qualifications of the board are set out in chapter 39, Florida Statutes.

STATE BOARD OF MEDICAL EXAMINERS (See: BOARD OF MEDICAL EXAMINERS)**STATE BOARD OF NATUROPATHIC EXAMINERS**

Composed of three practicing naturopathic physicians, residents of this state, appointed by the governor for terms of four years (§462.02, Florida Statutes).

The general powers and duties of the board are set out in chapter 462, Florida Statutes.

STATE BOARD OF OSTEOPATHIC MEDICAL EXAMINERS

Consists of six regularly licensed osteopathic physicians, appointed by the governor, for terms of three years, (§459.05, Florida Statutes).

The general powers and duties of the board are set out in chapter 459, Florida Statutes.

STATE BOARD OF PENSIONS

Composed of the governor, comptroller and state treasurer (§291.01, Florida Statutes).

The general powers and duties of the board are set out in chapter 291, Florida Statutes.

STATE BOARD OF PHARMACY (See: BOARD OF PHARMACY FOR THE STATE OF FLORIDA)**STATE BOARD OF PUBLIC WELFARE**

Composed of seven members to be appointed by the governor for terms of four years (§409.01, Florida Statutes).

The powers, duties and qualifications of the board are set out in chapters 409, 412 and 413, Florida Statutes.

STATE BOARD OF VETERINARY EXAMINERS (See: BOARD OF VETERINARY EXAMINERS)**STATE BOARD OF VOCATIONAL EDUCATION**

Composed of the governor, secretary of state, state treasurer, attorney general and superintendent of public instruction (§229.08, Florida Statutes.)

STATE BUDGET COMMISSION

Composed of the governor, secretary of state, attorney general, comptroller, state treasurer, commissioner of agriculture and state superintendent of public instruction (§216.01, Florida Statutes). The general powers and duties of the commission are set out in chapter 216, Florida Statutes.

STATE FIRE MARSHAL

The state treasurer is ex officio state fire marshal (§633.01, Florida Statutes).

The general powers and duties of the state fire marshal are set out in chapter 633, Florida Statutes.

STATE HOUSING BOARD

Composed of the governor, comptroller, state treasurer, attorney general and commissioner of agriculture (§424.04, Florida Statutes).

The general powers and duties of the board are set out in chapter 424, Florida Statutes.

STATE LIBRARY BOARD

Composed of three members appointed by the governor for terms of four years (§§257.01 and 257.02, Florida Statutes).

The general powers and duties of the board are set out in chapter 257, Florida Statutes.

STATE LIVE STOCK SANITARY BOARD

Composed of seven practical livestock men, residents of the state, appointed by the governor for terms of four years (§585.02, Florida Statutes).

The general powers and duties of the board are set out in chapter 585 Florida Statutes.

STATE MOTOR VEHICLE COMMISSIONER

Appointed by the governor for a term of four years (§318.01, Florida Statutes).

The general powers and duties of the commissioner are set out in chapter 318, Florida Statutes.

STATE PAROLE COMMISSION (See: PAROLE COMMISSION)**STATE PLANNING BOARD**

Composed of the secretary of state, the chairman of the state road department and three members, to be appointed by the governor, for terms of four years each (419.01, Florida Statutes). The powers, duties, and the qualifications of the three members of the board to be appointed by the governor, are set out in §§419.02-419.12, Florida Statutes.

STATE PLANT BOARD

Consists of five citizens of this state, one from East Florida, one from South Florida, one from West Florida, one from Middle Florida and one from Middle South Florida, appointed by the governor for terms of four years (§581.01, Florida Statutes).

The general powers and duties of the board are set out in chapter 581, Florida Statutes.

STATE RACING COMMISSION

Consists of five members appointed by the governor for terms of two years (§550.01, Florida Statutes).

The general powers and duties of the commission are set out in chapters 550 and 551, Florida Statutes.

STATE RAILROAD COMMISSION (See: FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION)**STATE ROAD DEPARTMENT**

Consists of five members appointed by the governor for terms of four years (§341.01, Florida Statutes).

The general powers and duties of the department are set out in chapters 317, 331, 341, 379, §§208.09, 350.75, 952.16-952.21, Florida Statutes.

STATE SERVICE OFFICER

Appointed by the governor for a term of four years (§292.02, Florida Statutes).

The general powers and duties of the state service officer are set out in chapter 292, Florida Statutes.

STATE SOIL CONSERVATION BOARD

Consists of five citizens of this state, one from East Florida, one from South Florida, one from West Florida, one from Middle Florida and one from Middle South Florida, appointed by the governor for terms of four years (§582.06, Florida Statutes).

The general powers and duties of the board are set out in chapter 582, Florida Statutes.

STATE TEXTBOOK PURCHASING BOARD

Composed of the governor, secretary of state, attorney general, comptroller, state treasurer, superintendent of public instruction and commissioner of agriculture (§233.13, Florida Statutes).

The powers and duties of the board are set out in §§233.13 and 233.26, Florida Statutes.

STATE TUBERCULOSIS BOARD

Composed of three members to be appointed by the governor for terms of four years (§392.01, Florida Statutes).

The powers, duties and qualifications of the board are set out in §§392.02-392.14, Florida Statutes.

STATE VETERANS COMMISSION (See: DEPARTMENT OF VETERANS AFFAIRS)**STATE WELFARE BOARD**

Consists of seven members appointed by the governor and confirmed by the senate, to serve for a term of four years, (§409.01, Florida Statutes).

The general powers and duties are set out in chapter 409, Florida Statutes.

STATUTORY REVISION DEPARTMENT

This department is under the supervision and direction of the attorney general (§16.43, 1947 Supplement, Florida Statutes).

The powers and duties of the department are set out in §§16.44-16.51, 1947 Supplement, Florida Statutes.

STEPHEN FOSTER MEMORIAL COMMISSION

Composed of five members, citizens and residents of the state, appointed by the governor, for terms of four years (§265.13, Florida Statutes).

The general powers and duties of the commission are set out in §§265.13-265.16, Florida Statutes.

STRUCTURAL PEST CONTROL BOARD

Composed of five members, appointed by the governor for terms of three years each, except the first board whose terms are as provided by the statute (§482.07, Florida Statutes).

The general powers and duties of the commission are set out in chapter 482, Florida Statutes.

SUMMER SCHOOLS, BOARD TO NAME TEACHERS FOR (See: BOARD TO NAME TEACHERS FOR SUMMER SCHOOLS)**SUPERVISING INSPECTOR OF NAVAL STORES**

The supervising inspector and inspectors of naval stores are appointed by the governor, no term of office being stated (§523.08, Florida Statutes).

The general powers and duties of the inspector are set out in chapter 523, Florida Statutes.

SUPERVISION AND REGULATION OF FORMS FOR ASSUMPTION OF RISKS BY SURETY COMPANIES, BOARD FOR (See: BOARD FOR SUPERVISION AND REGULATION OF FORMS FOR ASSUMPTION OF RISKS BY SURETY COMPANIES)**SUPREME COURT BUILDING COMMISSION**

Consists of the governor, comptroller, attorney general, a justice of the supreme court and three citizens to be appointed by the governor (§255.06, Florida Statutes).

Powers and duties of this commission are set out in §§255.06-255.113, Florida Statutes.

TEACHERS FOR SUMMER SCHOOLS, BOARD TO NAME (See: BOARD TO NAME TEACHERS FOR SUMMER SCHOOLS)**TEXTBOOK PURCHASING BOARD, STATE (See: STATE TEXTBOOK PURCHASING BOARD)****TEXTBOOK RATING COMMITTEE**

Composed of seven members appointed by the state board of education, upon the recommendation of the state superintendent of public instruction. The state superintendent and one member of his department are additional and ex officio members. (§233.07, Florida Statutes).

The powers, duties and qualifications of the committee are set out in §§233.07-233.11 et seq., Florida Statutes.

THE POLICE OFFICERS' INSURANCE AND ANNUITY FUND, BOARD OF COMMISSIONERS OF (See: BOARD OF COMMISSIONERS OF THE POLICE OFFICERS' INSURANCE AND ANNUITY FUND)

TRUSTEES OF TEACHERS' RETIREMENT SYSTEM, BOARD OF
(See: BOARD OF TRUSTEES OF TEACHERS' RETIREMENT
SYSTEM)

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND

Composed of the governor, comptroller, state treasurer, attorney general and commissioner of agriculture (§253.02, Florida Statutes).

The general powers and duties of the trustees are set out in chapters 253 and 270 and §§192.38-192.50, 285.02 and 331.05, Florida Statutes, and other laws.

TUBERCULOSIS BOARD, STATE (See: STATE TUBERCULOSIS
BOARD)

UNIFORM STATE LAWS, COMMISSIONERS ON (See: COMMIS-
SIONERS ON UNIFORM STATE LAWS)

VETERINARY EXAMINERS, BOARD OF (See: BOARD OF VET-
ERINARY EXAMINERS)

VITAL STATISTICS, BUREAU OF (See: BUREAU OF VITAL STA-
TISTICS)

VOCATIONAL EDUCATION, STATE BOARD OF (See: STATE
BOARD OF VOCATIONAL EDUCATION)

THE OFFICE OF ATTORNEY GENERAL IN FLORIDA

The attorney general in Florida derives his office from the people. He is elected by popular choice and acquires his powers and authority and is charged with the duties of his office from three primary sources: First, the common law; second, the Constitution of Florida; third, the statutory law.

Judicial decision, interpretation and construction enter the picture by way of defining, declaring and designating this authority and these duties within the common law, constitutional and statutory, grant and limitation.

COMMON LAW POWERS, DUTIES AND AUTHORITY

He is as much the representative of the State of Florida in the supreme court, as the King's Attorney General is his representative in the Court of King's Bench. It is his sole duty to appear in and attend to, in behalf of the state, all suits or prosecutions, civil or criminal, or in equity, in which the state may be a party, or in anywise interested, in the supreme court of this state. At common law his office is in many respects judicial in character and he is clothed with considerable discretion. If the power exists, it is not a question of right in him to institute the necessary proceeding when in his opinion a condition exists which requires the exercise of the power, it is a matter of duty. At common law it is his duty to prosecute all actions necessary to protect state's property and revenue, to represent the state in all criminal cases before the appellate court; to revoke and annul grants made by the state improperly or when forfeited by the grantee; to determine the right of anyone who claims or usurps any office; to vacate the charter or annul the existence of a corporation for violations of its charter or for omitting to exercise its corporate powers; to enforce trusts; to prevent public nuisances; and in the absence of express legislative restrictions, to exercise all such power and authority as public interest may require. *State ex rel Landis, Attorney General, et al vs. S. H. Kress & Co.*, 115 Fla. 189, 155 So. 823.

CONSTITUTIONAL POWERS, DUTIES AND AUTHORITY

Article IV, Section 22 of the Constitution of Florida, provides as follows: "The Attorney General shall be the legal advisor of the Governor and of each of the Officers of the Executive Department, and shall perform such other legal duties as may be prescribed by law. He shall be the Reporter for the Supreme Court." The full import of this constitutional field of duty has never been defined by the Supreme Court of Florida. Courts of other states have gone very far in their application of similar provisions in the charge of legal duty, responsibility and field of legal representation held to belong to the office.

STATUTORY POWERS, DUTIES AND AUTHORITY

In addition to his common law and constitutional powers, duties and authority, the attorney general has the following general and regular statutory powers, duties and authority, to:

1. Appear in and attend to suits or prosecutions in any of the courts of the state or in any courts of any other state or of the United States in behalf of the State of Florida (§16.01).*

2. Give his official opinion and legal advice in writing on any matter touching their official duties, upon the written requisition of the governor, secretary of state, treasurer, comptroller or superintendent of public instruction (§16.01 and §22, Art. IV, Fla. Const.).

3. Exercise all powers and perform all duties incident to such office and to make and keep in his office a record of all official acts and proceedings, such record to contain copies of his opinions (§16.01).

4. Make a written report on the effect and operation of the acts of the last previous legislative session, and the decisions of the court thereon, to the governor, five days before the first day of every session of the legislature (§16.05).

5. Call a biennial session of circuit judges to consider their report on desirable or necessary legislation (§16.06).

6. Exercise general superintendence and direction over the several state attorneys (§16.08).

7. Direct and be in charge of the Statutory Revision Department, which also includes legislative bill drafting (§16.43-16.51).

8. Prepare alphabetical indexes for the journals of the legislature and in this connection employ competent indexers who shall be attaches of the legislature and paid as other attaches are paid (§16.44).

9. Participate with other states in preserving the constitutional integrity of the state (§16.52).

10. Approve the bond of the comptroller (§17.01).

11. Report the decisions of the supreme court, have them prepared in printed volumes and keep one copy of each in his office (§§25.29, 25.30).

12. Devise and furnish a form of seal for circuit court of the state (§26.48).

13. Prepare and cause to be printed copies of fee bills of the various officers of the several counties of the state and to send copies of same to such county officials (§58.07).

14. Represent the state treasurer in connection with claims for funds deposited with him by receivers, trustees, legal representatives and other fiduciaries (§69.07).

15. Conduct condemnation proceedings on behalf of the Board of Commissioners of State Institutions and on behalf of the adjutant general's office for military purposes (§73.22).

16. Conduct quo warranto proceedings (§§80.03, 875.19).

17. Represent the state in proceedings under the Declaratory Judgment Law where the constitutionality of statutes is involved (§87.10).

18. Devise a suitable seal for the supervisors of registration (§98.51).

*Reference is to Florida Statutes.

19. Approve title to real estate in which the state is interested (§135.16).
20. Represent the state in tax lien foreclosure proceedings by municipalities involving Murphy Act lands (§196.21).
21. Assist in the collection and enforcement of chain store license taxes (§204.13).
22. Prepare contracts for purchase of uniform school books (§233.16).
23. Approve school district bonds (§236.48).
24. Prosecute violations of school budget law (§237.23).
25. Legal advisor to board of trustees of the Teachers Retirement System (§238.03 (9)).
26. Represent Board of Control in Eminent Domain proceedings (§240.14).
27. Act as ex officio member and legal advisor of the State Defense Council (§249.03).
28. Conduct condemnation proceedings on behalf of the Armory board (§250.40).
29. Pass upon and approve regulations of district drainage boards (§298.53).
30. Act as legal advisor for the State Road Department. Said department, however, has a special attorney authorized by statute (§341.17).
31. Act as attorney for the Railroad and Public Utility Commission (this work is negligible because of the fact that the Railroad and Public Utility Commission has authority to employ its own special counsel.) (§§350.29, 350.30, 350.62, 350.66).
32. Assist Railroad and Public Utilities Commission in making investigations relating to the regulation of private wire service (§§365.06, 365.07).
33. Give special attention to legal proceedings in connection with the sponge fishing industry (§373.22).
34. Attend to all legal business arising in connection with the laws governing the salt-water fishing industry (§373.22).
35. Conduct suits on bonds of state health officer (§381.10).
36. Enforce the Vital Statistics Law (§382.37).
37. Represent the state in proceedings to suspend or revoke licenses of labor union business agents (§447.10).
38. Represent the state in disbarment proceedings in the supreme court (§454.28).
39. Assist in the enforcement of the Basic Science Law (§456.22).
40. Assist in the enforcement of laws regulating the practice of optometry (§463.19).
41. Approve the form for bonds of nonresident outdoor advertisers (§479.06).
42. Assist in the enforcement of the laws regulating the sale of milk, cream and milk products (§502.26).

43. Assist in the enforcement of laws regulating small loan businesses (§516.23).
44. Pass upon permits of associations doing business under a declaration of trust (§§517.03, 609.05).
45. Investigate and rectify commercial discriminations (§§540.02-540.05).
46. Enforce the anti-trust laws of the state (§542.03).
47. Bring proceedings to forfeit charters of corporations which violate the laws or fail to comply with mandatory requirements of same (§§542.03, 542.04, 542.09).
48. Prosecute combinations against Florida meats (§544.02).
49. Bring proceedings against combinations in restraint of motor vehicle financing (§545.08).
50. Act as attorney for the State Racing Commission. Said commission, however, has statutory authority to employ its special counsel (§550.01).
51. Represent the commissioner of agriculture in connection with the enforcement of the Pure Seed Labeling Law (§578.15).
52. Enjoin violations of the laws regulating commercial food-stuffs (§580.19).
53. Act as legal advisor and attorney for the State Plant Board (§581.02).
54. Bring proceedings against fair associations for annulment of their charters when laws relating to same are violated (§§615.11, 616.09).
55. Bring proceedings, under certain conditions, for annulment of franchises of social clubs (§617.09).
56. Bring proceedings, under certain conditions, to annul franchises of corporations not for profit (§617.09).
57. Bring proceedings to test the validity of the incorporation of cooperative marketing associations and non profit cooperative associations (§§618.23, 619.09).
58. Sue to recover fines for doing business without a license (§625.17).
59. Conduct prosecutions against defaulting and delinquent surety companies (§626.08).
60. Conduct proceedings against insolvent or defaulting insurance companies (§§626.08, 626.12).
61. Represent the insurance commissioner in connection with insurance matters (§§637.54, 640.13).
62. Assist in fixing values of securities deposited with the state treasurer by trust companies under the trust law (§655.10).
63. Bring proceedings to recover escheated property (§731.33).
64. Bring proceedings to forfeit prize money in lotteries (§849.12).
65. Conduct extradition hearings for the governor (§941.04).
66. Act as attorney for the Parole Commission (§947.11).

MEMBERSHIP IN BOARDS, COMMISSIONS AND COUNCILS

The attorney general is a member of the following state boards, commissions and councils:

1. Board of Commissioners of State Institutions (Fla. Const. §17, Art. IV).
2. State Board of Education (Fla. Const. §3, Art. XII, §229.03, Florida Statutes).
3. Trustees of Internal Improvement Fund (§253.02, Florida Statutes).
4. State Board of Drainage Commissioners (§298.69, Florida Statutes).
5. State Budget Commission (§216.01, Florida Statutes).
6. State Board of Conservation (§§373.01, 377.07, Florida Statutes).
7. State Board of Pardons (Fla. Const. §12, Art. IV).
8. State Canvassing Board (§99.49, Florida Statutes).
9. Florida Securities Commission (§517.03, Florida Statutes).
10. Railroad, etc., Assessment Board (§195.01, Florida Statutes).
11. Board for fixing values of investment securities of trust companies (§655.10, Florida Statutes).
12. Board for supervision and regulation of forms to be used for assumption of risks by surety companies (§648.16, Florida Statutes).
13. State Housing Board (§424.04, Florida Statutes).
14. Department of Public Safety Executive Board (§321.01, Florida Statutes).
15. State Board for Vocational Education (§229.08, Florida Statutes).
16. State Textbook Purchasing Board (§233.13, Florida Statutes).
17. Ex officio member of Florida State Defense Council (§249.03, Florida Statutes).
18. Governor's Cabinet (Fla. Const. §20, Art. IV).

STATUTORY REVISION DEPARTMENT

The 1943 Legislature created a permanent statutory revision, legislative, drafting and reference department, which is designated and known as the statutory revision department, under the direct supervision and control of the attorney general (§§16.43 et seq., Florida Statutes). The powers, duties and functions of the said statutory revision department are set out in full in the foregoing cited statutes.

In compliance with the foregoing statutes, the statutory revision department was set up and developed, as a department, in the office of the attorney general and under his direct supervision and control. The work of the said statutory revision department is now carried on under the following plan and system.

Continuing plan of operation—The statutory revision department operates, as directed under the statutes (see §§16.19-16.24, 16.26-16.291,

16.43-16.51, Florida Statutes), to the fullest extent and according to the intent and purpose of said statutes, its work being carried forward in a continuous manner and in the following objective classification:

(1) Continuing a systematic study of general statutes and laws for the purpose of reducing bulk, removing inconsistencies, eliminating redundancies and surplusages, correcting mistakes in grammar, punctuation, language, etc., combining and consolidating duplicate laws and otherwise performing the revisory function contemplated in the law and providing for said revision by revisers' bills to be submitted to each session of the Legislature.

(2) Carrying on the arrangement and identification of the general statutes and laws of this state as adopted in Volume I, Florida Statutes, by adding, in the proper place, all new matter belonging therein; this material is compiled, revised and published biennially and adopted by each session of the legislature as the official Florida Statutes.

(3) Indexing each of the journals of the two branches of the Legislature.

(4) Preparing and having printed from time to time such number of copies as may be required of supplements to Volume II and III of Florida Statutes, securing copyrights on same and re-edit and republish same when necessary.

(5) Carrying on a continuous reworking of the general index to Volume I in order that said index may be improved with each biennial publication.

(6) Indexing the general laws of each legislative session that are to be incorporated in the Florida Statutes. This material is indexed in the light of the existing general index so that the new material will fit into the existing pattern of said general index.

(7) To make a complete biennial revision of the general statutes and laws of this state to conform with the numbering system, style, contents and other characteristics of the Florida Statutes.

(8) Maintaining a bill drafting department for the benefit of the members of the legislature and the state officials, boards and agencies.

(9) Maintaining a legislative reference library in conformance with legislative authorization.

(10) Preparing, compiling and having printed such handbooks, and other publications of the attorney general as may be required by law or that in the opinion of the attorney general is deemed advisable.

(11) Assisting other state departments, bureaus and agencies in compiling laws affecting their activities and operation, and lending such assistance as may be required in having such compilations printed in proper form.

(12) Maintaining contacts with similar departments in other states, and with lawbook publishing companies and editors who show a tendency to cooperate and exhibit an interest toward the mutual betterment and advancement of work in this field.

Preservation of type used.—All type used in printing publications of the statutory revision department is required by law to be preserved, and

is stored and protected by adequate insurance in conformity with such law.

Selection and supervision of personnel.—Personnel is selected and maintained according to the best talent available, and the work of the department is assigned and distributed to the personnel in such manner as to secure the best results, giving consideration to the particular talents of each person. Generally, however, responsibility is divided as follows:

- (1) General supervision and control is under the attorney general who, under authority of §16.43, Florida Statutes, selects a director. The director has the direct supervision and control of the department, who with the advice of the attorney general selects and employs the operating personnel and fixes their compensation.

- (2) Principal study of the statutes, revisions and preparation of revisers' bills is under the supervision of the director.

- (3) Indexing and continuous study and revision of index material is by a qualified indexer who is under the administrative supervision of the director.

- (4) Annotating and related work is kept up to date under the supervision of the director.

- (5) Proofreading and checking is carefully and meticulously done by qualified persons.

- (6) Stenographic and clerical work is performed by accurate and careful stenographers and clerks.

- (7) Bill drafting and research between and during sessions of the Legislature is done by such members of the department and the attorney general's office as may be qualified for such work, under the direction of the attorney general originally and upon recommendation and advice of the director.

The revisers' bills, as provided by statute, are prepared by the director and the department under his direction. The principal objectives of revisers' bills are to correct, amend, consolidate, revise, repeal or otherwise immaterially alter or change any general statute or law, or parts thereof, of a general nature and application which may appear to be subject to revision but without changing substance, or altering operation and effect. They do not deal with:

- (1) Statutes relating to or concerning only one or more counties or municipalities, or parts thereof, except in certain cases where the subject matter relates to the creation or jurisdiction of state, county or municipal courts.

- (2) Statutes relating to, concerning, or that would be operative in only a portion of the state, except in cases where the subject matter relates to the creation or jurisdiction of state or county courts.

- (3) Statutes relating to or concerning only a certain municipal corporation.

- (4) Statutes relating to or concerning only one or more designated individuals or corporations.

(5) Statutes incorporating a designated individual corporation or making a grant thereto.

(6) Road designation laws.

The omission of any statute coming within the classifications aforesaid is properly accounted for in the tables or indexes as carried forward in the back of Volume I, or Volumes II and III.

In the compilation of material and the drafting of revisers' bills, the following rules and procedure are adhered to:

- (1) A continuing and systematic study of the statutes is carried on.
- (2) A careful search is made for:
 - (a) Inappropriateness of run-in lines to sections.
 - (b) Misspelled words and poor punctuation.
 - (c) Statutes limited as to time of operation and which have expired.
 - (d) Sections, or parts of sections, that conflict with, or the operation of which is inconsistent with, the logical operation of other sections.
 - (e) Laws that have become obsolete.
 - (f) Sections that are so poorly written that the meaning is not clear or that may be subject to more than one interpretation.
 - (g) Sections containing lengthy and superfluous matter that may be rewritten for the sake of brevity.
 - (h) Sections that are poorly or incorrectly phrased in their reference to other parts of the statutes, or otherwise.
 - (i) Sections that, because of amendments and additions to the statutes, should be renumbered and placed in different sequence.
 - (j) Sections, or parts of sections, that have been constructively repealed or made inoperative by other laws.
 - (k) Conflicting powers and duties of officials.
 - (l) Repetitious statutes.

The department carries continuing notes extracted from the annotations as to the construction, operation, validity or constitutionality of the laws; maintains a running file containing a list of errors, suggestions, etc., that are submitted by other persons; and maintains a system of keeping comprehensive notes and data for the final preparation of the revisers' bills. In the preparation of revisers' bills, sections containing new material to be added or for the purpose of replacing existing sections are written with due regard to brevity, using as plain and modern language as possible and simple rather than complex words and phrases, with due regard to correct punctuation, avoiding verbosity and repetitions.

Each reviser's bill is accompanied by complete explanatory memos.

Printing.—Departmental printing is advertised and bids received for it according to the requirements of law. In addition, invitations to bid are mailed with copies of specifications, to all qualified printers within the state. Specifications are made up as simply as possible, with due regard for the insurance of a first-class product and for the protection of the state. Specifications are made up with a view toward economy, without sacrificing quality. General specifications and requirements are compiled and used so far as possible in the contracts for printing. Wide variance in style and form from that presently used is avoided.

COMPILED STATEMENT OF CASES HANDLED IN THE ATTORNEY GENERAL'S OFFICE

(From Jan. 1, 1949 Through Dec. 31, 1950)

CIVIL CASES

Number of Cases pending January 1, 1949.....	340
Number of cases docketed between Jan. 1, 1949 and Dec. 31, 1950	
Docketed and still pending.....	135
Docketed and closed	115 250
	590
Number of cases disposed of between Jan. 1, 1949 and Dec. 31, 1950	
Pending January 1, 1949—Closed.....	281
Docketed and closed	115 396
	194
Number of cases pending January 1, 1951.....	194

CRIMINAL CASES

Number of cases pending January 1, 1949.....	94
Number of cases docketed between Jan. 1, 1949 and Dec. 31, 1950	
Docketed and still pending	105
Docketed and closed	225 330
	319
Number of cases disposed of between Jan. 1, 1949 and Dec. 31, 1950	
Pending January 1, 1949	94
Docketed and closed	225 319
	105
Number of cases pending January 1, 1951.....	105

TOTAL CASES

Total civil and criminal cases pending or docketed during bien- nium ending December 31, 1950	1,014
Total civil and criminal cases pending or disposed of during bien- nium ending December 31, 1950	715
Total civil and criminal cases pending Jan. 1, 1951.....	299

EXTRADITION STATISTICS

REQUISITIONS BY FLORIDA

During the years 1949 and 1950 the State of Florida made Requisitions on other States, the District of Columbia, Cuba, Mexico, Puerto Rico and the United States Navy.

Alabama	26	Missouri	2
Arizona	1	Nevada	1
Arkansas	2	New Jersey	11
California	9	New York	19
Connecticut	2	North Carolina	9
Georgia	41	Ohio	10
Illinois	14	Oregon	11
Iowa	1	Pennsylvania	10
Indiana	5	South Carolina	9
Kansas	4	South Dakota	1
Kentucky	3	Tennessee	11
Louisiana	11	Texas	17
Maryland	3	Virginia	9
Massachusetts	7	Washington	4
Michigan	6	West Virginia	2
Mississippi	2	Dist. of Columbia	4
Puerto Rico	1	Mexico	1
U. S. Navy	1	Cuba	1

REQUISITIONS ON FLORIDA

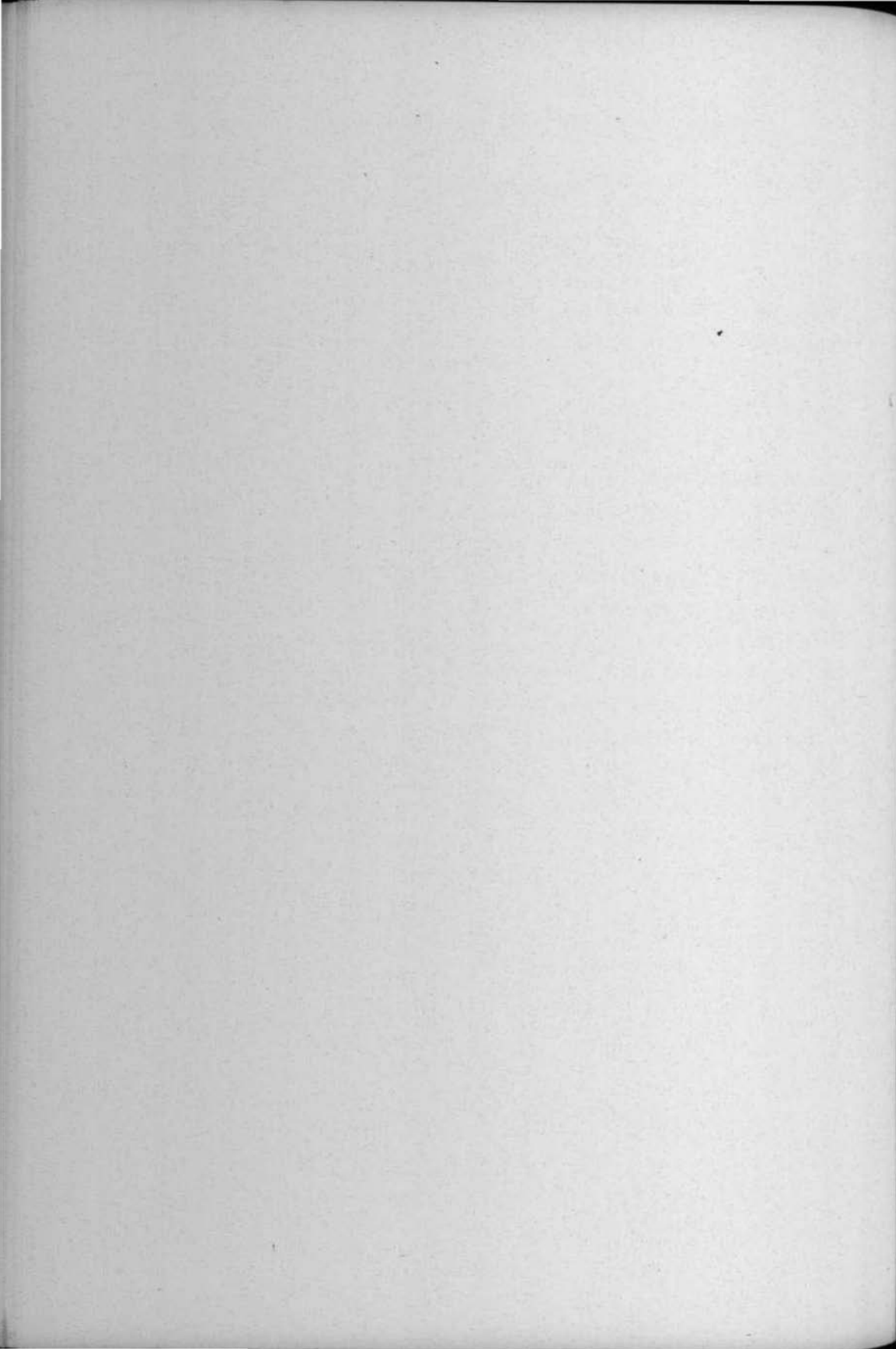
During the years 1949 and 1950 the following states have made Requisitions on the State of Florida for fugitives from justice, as follows:

Alabama	34	Missouri	3
Arkansas	1	Nebraska	1
California	23	New Hampshire	1
Connecticut	7	New Jersey	11
Georgia	62	New Mexico	1
Illinois	16	New York	44
Indiana	8	North Carolina	30
Iowa	2	Ohio	23
Kansas	4	Oklahoma	2
Kentucky	7	Pennsylvania	12
Louisiana	1	South Carolina	15
Maine	2	Tennessee	9
Maryland	3	Texas	3
Massachusetts	12	Virginia	27
Michigan	19	West Virginia	1
Minnesota	1	Wisconsin	5
Mississippi	4		

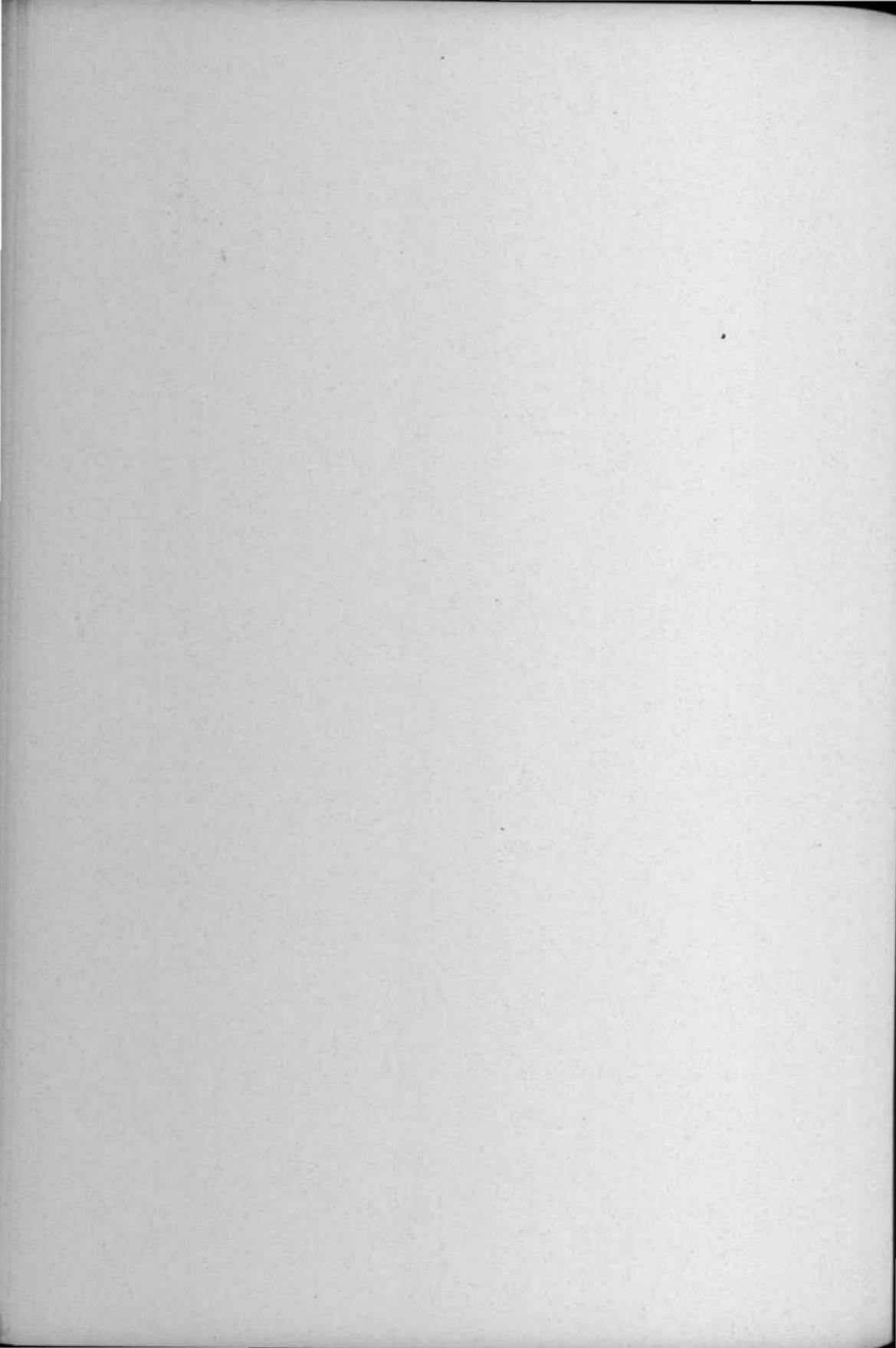
ESCHEATMENTS

Date Entered in Treas'rs Records	Estate of	Amount	
Jan. 22, 1949	Bony Buono, also known as Buono Tony	1,201.52	Duval
Feb. 26, 1949	G. A. Taylor	9,320.21	Dade
May 9, 1949	Fred Frederickson	1,101.20	Highlands
May 21, 1949	Elbert L. Woodbridge	178.67	Palm Beach
July 7, 1949	Frank C. Farrington	590.12	Pasco
July 21, 1949	Clara Jones, also known as Clara M. Jones	873.79	Dade
July 21, 1949	John Herman Hoffman, Her- nando County File No. 395.....	175.05	Hernando
July 29, 1949	Claire Kruger, Dade County, Probate No. 19587	582.80	Dade
Sept. 20, 1949	Julien Bader	1,527.13	Dade
Oct. 18, 1949	Claire Kruger, Sale of Cloth- ing belonging to this estate....	5.00	Dade
Oct. 19, 1949	Thomas Baker	103.56	Bay
Oct. 29, 1949	Edith Daymer McRae	2,217.11	Dade
	Impoundment Fee, Fred J. Ferrell as provided under Chapter 6717 Laws of Fla., J. C. Gwynn, County Judge, Leon		
Nov. 23, 1949	County	6.30	
Nov. 28, 1949	Edith Daymer McRae	.25	Dade
Dec. 10, 1949	Representing monies trans- ferred from Court Registry Fund to Principal of School Fund under provisions of Chapter 24351, being funds which have been adjudicated and unclaimed for a period of five years or more in Court Registry Fund	3,173.76	
April 3, 1950	Robert R. Lamb (W. H. Brew- ton, as Attorney for Adminis- tratrix, Ruth I. Marsh).....	1,505.78	Pasco
April 3, 1950	Marie Solomon—nee Gordon as per Order of County Judge, Dade County, Nov. 18, 1949.....	29,306.94	Dade
April 10, 1950	Thomas Shelney	3,520.77	Hillsborough

June 1, 1950	Monies derived from the sales of firearms which were received by the Adjutant General in accordance with Section 790.08 Florida Statutes 1941	742.56	
June 5, 1950	Charles E. Clay	3,102.35	DeSoto
June 6, 1950	Clara White	13,776.36	Dade
June 14, 1950	Lossia Lathrop	1,876.28	Osceola
June 21, 1950	Marie Solomon (excess deposit for court costs in connection with Estate)	6.40	
June 29, 1950	David Dickson	168.74	Dade
July 19, 1950	Leo F. Corcoran	5,765.23	Volusia
Aug. 25, 1950	Frederick Ernest Ganz	231.23	Dade
Sept. 14, 1950	Frank Drake	617.47	Broward
Sept. 11, 1950	Frank Slattery	188.18	Dade
Oct. 19, 1950	James W. Reid	152.69	Dade
Nov. 10., 1950	Samuel H. Vanderslice	51.28	Hillsboro
Nov. 28, 1950	Walter Dunbar	1,195.44	Duval
July 25, 1950	Warren, Lilly	881.37	Dade
Aug. 7, 1950	Fitch, Belle	9,575.05	Pinellas
Aug. 2, 1950	Edwards, J. A.	50.14	Bay



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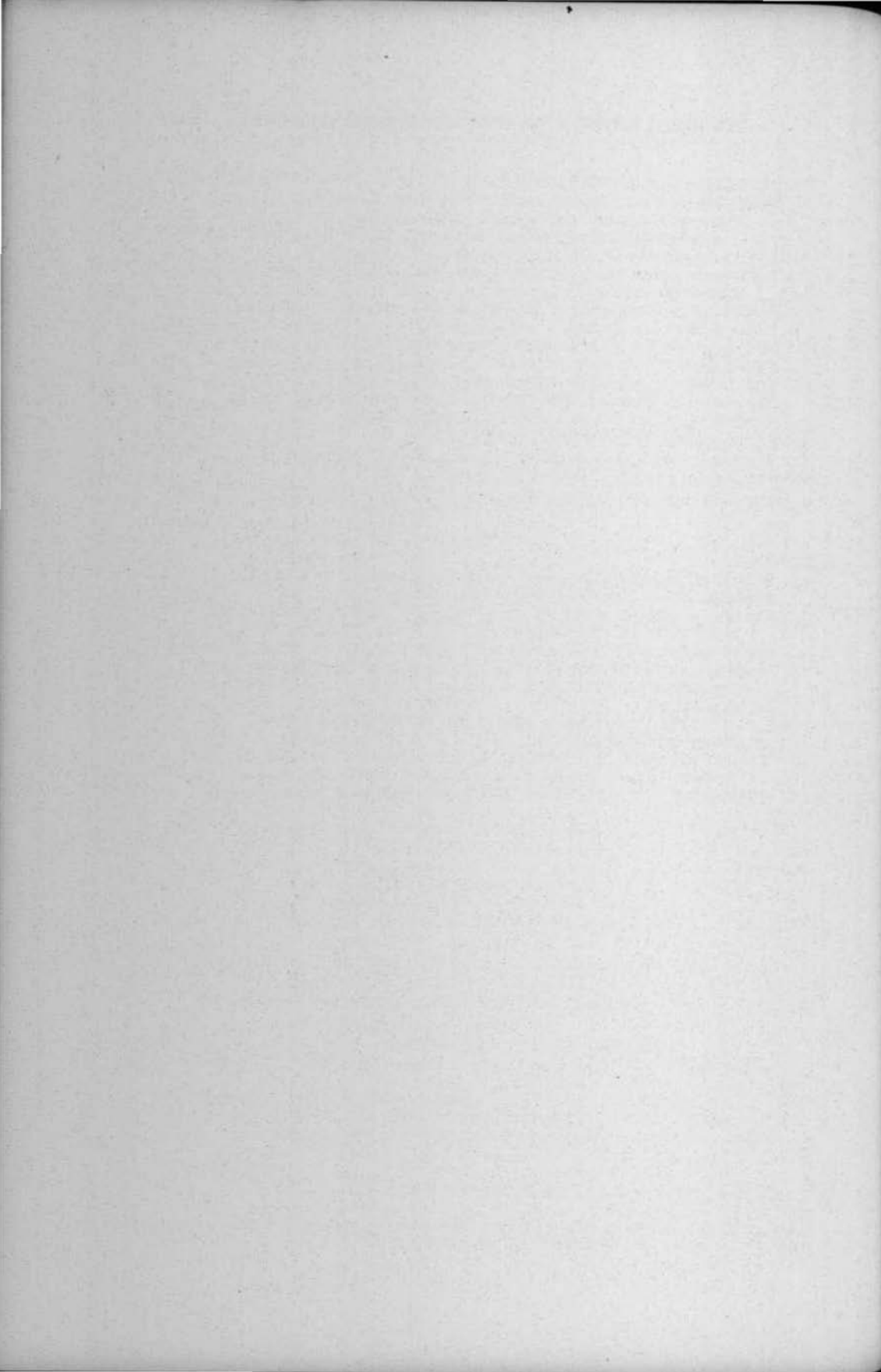
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